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REPORTS

FROM

THE COURT OF CLAIMS,

SUBMITTED TO THE

HOUSE OF REPRESENTATIVES

DURING

THE FIRST SESSION OF THE THIRTY-SIXTH CONGRESS,

1859-'60.

FIVE VOLUMES.

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36TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 199.

JAMES McCORMICK.

FEBRUARY 11, 1860.—The Court of Claims submitted the following report; which was committed to the Committee of the Whole House, and ordered to be printed.

THE COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JAMES McCORMICK *vs.* THE UNITED STATES.

1. The petition of the claimant and amended petition.
2. Documents received by the House of Representatives, under the resolution of the 21st of February, 1856, transmitted to that House.
3. United States solicitor's brief.
4. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims

To the honorable the Court of Claims of the United States, sitting in Washington D. C.

Your petitioner, James McCormick, respectfully represents:

That in the year 1849, Commodore Thomas ap Catesby Jones, then in command of the American squadron in the Pacific ocean, had in his possession a steam saw-mill belonging to the government of the United States, which had been sent out by said government with a view to supply the necessary lumber for the naval forces of the United States on the California coast; that the duty of Commodore Jones was to employ said saw-mill in such manner as to accomplish the purposes for which it was sent to the Pacific, and that his authority was commensurable with his duty; that at that time it was extremely difficult to procure labor for government purposes at any price, common laborers demanding as high as ten and often twenty dollars per

diem. Under these circumstances, and not being able to store the said mill, unless at great expense, and incurring the risk of damage from rust, and finding it impracticable to have said mill set up and worked on government account exclusively, acting on behalf of the Navy Department of the United States, entered into a contract with Mr. Robert A. Parker, (which said contract is now on file in the Navy Department,) bearing date 7th day of April, A. D. 1849, which stipulated that the said Parker should set up and work said mill for eighteen months from the first day of May then ensuing, viz: in 1849. That, among other stipulations embraced in said contract, the said Parker was required to have said mill ready for operation within four months from the first of May, 1849; that is, by the first day of September, 1849. From the commencement of sawing he was to be allowed the exclusive use of it for three months. After the last mentioned period should elapse, his undertaking was, "to furnish upon the order or requisition of any commanding officer of the United States navy in the Bay of San Francisco, or at Monterey, such sawed timber for the use of the navy as the mill may be able to cut from any timber on hand, or which may be sent to the mill by such naval commander, to be used ashore or afloat, *but for naval purposes only*, as he may require, the price of which shall not exceed cost and charges of procuring, transporting, and sawing." Commodore Jones made this arrangement, believing, and your petitioner charges, that he had ample authority to do so, and that it was best for the United States government. Your petitioner further represents that in and by said contract it was further stipulated, "that if, contrary to all reasonable expectation, the government should require the steam engine, mills, &c., for their own use, before the expiration of the contract, in that case, provided the mills have not cleared all costs, &c., then a referee shall be appointed by the parties respectively, to ascertain and name the sum, if any, necessary to reimburse the party aforesaid.

That, contrary to the expectation of all parties, the contract was broken up, long before its expiration, by the Secretary of the Navy, but not by Hon. John Y. Mason, under whose administration of the Navy Department the said steam engines, mills, &c., had been sent out as aforesaid; he having retired from the Navy Department about March, A. D. 1849, was succeeded by the Hon. William B. Preston in said office. The latter gentleman, by order dated December 1, 1849, directed Commodore Jones "to place the saw-mill in charge of the navy agent or purser at San Francisco, as government property," Mr. Preston not being aware at the time of issuing this order of the arrangement which had been made between Commodore Jones and Mr. Parker; when informed of it, he attempted, by a subsequent order, to prevent said arrangement from being interfered with in case the mill had not cleared the expense of setting up, working, &c. This last order was dated March 12, 1850, and was too late. Under the order first referred to, that of December 1, 1849, Commodore Jones had, on the 28th of January, 1850, given notice, and broken up the contract; the mill had been ordered to be given up; contracts for lumber to be sawed had been forfeited, as well as contracts to supply plank and lumber; the damage to Parker had been incurred, and

under the clause of the contract providing for referees, as above set out, Commodore Jones selected, on the part of the United States government, John W. Hambleton, then navy agent at San Francisco; and your petitioner, who for a good and valuable consideration long before purchased out said Parker's interest in said contract, and who, as assignee of Robert A. Parker, had succeeded to all his rights as well as responsibilities in the premises, selected, on his part. Talbot H. Green, a gentleman of high character, and an eminent merchant of San Francisco.

Said referees proceeded regularly to the discharge of the duty imposed upon them, and agreed upon an award on the 9th day of July, A. D. 1850, which said award is hereby made part of this petition. Reference to the same will be made more particularly upon final hearing.

The award aforesaid ascertained that the whole expense for erecting the saw-mill and putting it in operation, was..... $45,931 22
And that the whole receipts, earnings, and property on hand turned over to your petitioner was..... 20,184 55

So that the amount to be paid petitioner as assignee of said Parker was thus fixed at..... $25,766 67

And your petitioner further represents, that shortly after the 9th day of July, the time when said award was made, he made application to the Navy Department of the United States government for the payment of said award, and the same was refused; whereupon your petitioner memorialized the Congress of the United States, praying for the passage of a bill appropriating a sufficient amount to pay him his said award, with interest, from the date of its rendition, &c.

That the said memorial was in the House of Representatives on the 22d day of December, 1851, referred to the committee on Naval Affairs, and that on the 13th day of January, 1852, a report was made by said committee, accompanied by a bill, making the necessary appropriation, the same being report No. 34, of the House of Representatives, and House Bill No. 97, all of which will more fully appear by the proceedings of the said body; the bill, your petitioner was informed, was lost for want of time to pass it, and not from any reason of want of merit, &c.

Your petitioner charges that said Commodore Jones had sufficient authority, as he will be able to show upon final hearing, to make said contract. That it was never violated by said Parker; that the award made was in conformity with said contract, and has never been impeached by any one as fraudulent, illegal, or inequitable. That it was signed by Green, the referee of the petitioner, and also by Hambleton, the referee on the part of the government; and, further, Commodore Jones has never alleged anything against it.

He therefore prays your honors to cause judgment to be entered in your honorable court in his behalf for the amount of said award, with interest from the date thereof, and to report the same to the Congress of the United States for payment. Your petitioner states that he is the sole owner of the claim, having purchased Robert A. Parker's interest in the contract aforesaid.

S. S. WILLIAMS, *for petitioner.*

DISTRICT OF COLUMBIA, *County of Washington, ss.*

Be it remembered that on this 17th day of July, A. D. 1855, personally appeared before me the undersigned, a justice of the peace in and for the said county and District, Samuel S. Williams, who made oath in due form of law, that he believes the facts and things stated in the foregoing and annexed petition, upon information and the evidence in his possession, to be true as stated.

B. K. MORSELL, *J. P.*

IN THE UNITED STATES COURT OF CLAIMS.

JAMES MCCORMICK *against* THE UNITED STATES OF AMERICA.

Amended Petition.

The petition of Aristides Welch, respectfully represents to your honorable court, that, at the time of the filing of the original petition in the above case, the solicitor representing the claim upon the government of the United States was not advised that the same had been assigned to your petitioner by said McCormick, which was nevertheless true, as your petitioner charges, and prays your honorable court to amend the style of said suit, so as to make him the plaintiff therein, instead of said McCormick. He respectfully asks leave to amend said original petition by stating, that on the 28th day of August, A. D. 1851, he purchased of said James McCormick, at and for the sum of four thousand five hundred dollars, ($4,500,) all the right and claim of said McCormick in and to the contract named in said original petition, and particularly hereinafter set forth, which assignment and purchase bears date the said 28th day of August, A. D. 1851, and is written on the contract so assigned, which said contract is the original paper signed by Commodore Jones and Robert Parker respectively, and is in the words and figures following, that is to say:

"This indenture, made and entered into this 7th day of April, in the year of our Lord one thousand eight hundred and forty-nine, between Commodore Thomas ap C. Jones, commander-in-chief of the United States naval forces on the Pacific station, for and on behalf of the United States Navy Department of the one part, and Robert A. Parker on the other part, witnesseth:

"That the said party of the first part, Commodore Jones, for and in consideration of certain services to be hereinafter mentioned, does grant and give to the said Parker the use of a certain steam saw-mill, with the engine, machinery, fixtures, and tools thereunto belonging or accompanying the same, belonging the United States Navy Department, for the space of eighteen months from the first day of May next ensuing; the said Parker binding himself and his assigns to set up the said mill and put the same in operation within four months from the first day of May aforesaid.

"A minute inventory of the machinery, tools, and fixtures shall be taken in duplicate, the said Parker binding himself and his assigns to return the same, according to the inventory aforesaid, to the proper officer of the United States, in like order and condition in which he

received it, the usual wear and tear in such cases only excepted, whenever under this contract he can be called on to do so.

"For the term of three months from the commencement of sawing, no rent shall be exacted, but from and after that time the said Parker binds himself and his assigns to furnish, upon the order or requisition of any commanding officer of the United States navy in the bay of San Francisco, or at Monterey, such sawed lumber for the use of the navy as the mill may be able to cut from any lumber on hand, or which may be sent to the mill by such naval commander, to be used ashore or afloat, *but for naval purposes only*, as he may require; the price of which shall not exceed cost and charges of procuring, transporting, and sawing. The said lumber for naval puposes is to be received at the mill, and the quantity of lumber so called for is not to exceed in any one month one-third of the average capacity of the mill for sawing in that period.

"It is understood that, in addition to the saw-mill, a grist-mill, not yet arrived, has been ordered to this station; should the same arrive in any reasonable time, it is understood and agreed that it also shall be turned over to the said Parker, who shall put it up, and run it in connexion with the saw-mill for the same length of time; for the use whereof he, the said Parker, agrees and contracts to grind into breadstuffs or horse feed, any grain sent to the mill suitable therefor, for the use of persons or teams in the navy at or about San Francisco, free of toll, to any extent not exceeding two days in any one week, or at the rate thereof.

"If, contrary to all reasonable expectation, the government should require the steam-engine, mills, &c., for their own use before the expiration of this contract, in that case, provided the mills have not cleared all costs and charges for setting up and putting to work, and a fair business profit thereon, referees shall be appointed by the parties respectively to ascertain and name the sum, if any, necessary to reimburse the party aforesaid in all the costs and charges and profits aforesaid, which, when duly ascertained, will be paid by the United States to the aforesaid Robert A. Parker or his assigns.

"For the faithful performance of all the undertakings on his part, as herein contained, the said Robert A. Parker binds himself or his assigns in the penal sum of one thousand dollars, lawful money of the United States.

"Witness our hands and seals at San Francisco, California, the day and year first above written.

"THOS. AP. C. JONES, [L. S.]
"ROBERT A. PARKER," [L. S.]

That after the aforesaid agreement had been executed, and the said Parker had, according to the stipulations therein contained, proceeded in the erection of said saw-mill, the Honorable Secretary of the Navy, William B. Preston, by his order on Commodore Jones, bearing date December 1, 1849, directed the said Commodore Jones to place the said saw-mill in charge of the navy agent or purser at San Francisco, as government property; which said order is in the words following, that is to say:

NAVY DEPARTMENT, *December* 1, 1849.

* * * * * * * * *

"Be pleased to report to the department your proceeding in this case, as well as the condition of the government steam saw-mill sent to California in 1848, under what arrangement it was erected, for whose benefit it has been used, and its present state and condition. *You will also be pleased to place the saw-mill in charge of the navy agent or purser at San Francisco as government property.*" (A copy of said letter is herewith filed.)

That, as before stated, the Hon. Secretary was not aware at the time of the agreement made with Parker under said contract, his predecessor, Hon. J. Y. Mason, having sent out the mill, and that after he was advised of the fact he attempted to return the saw-mill and fixtures to said Parker, and place them in the same relation to him which had existed by and under said agreement, as will be seen by the following extract of a letter dated March 12, 1850, (a certified copy of which is herewith filed :)

"If, under the terms of the contract entered into with Mr. Parker, the mill has already relieved itself, then you will resume the possession of the said saw-mill, and if your means will enable you to do so you will use the same for the preparation of such timber, &c., as may be necessary for the purposes of the squadron under your command. If, however, upon a careful examination it is ascertained that Mr. Parker could be still entitled to remuneration thereunto, then you are ordered *to permit the mill to remain in his possession until he is reimbursed for the cost and charges of its erection, under the contract,* at which time you will assume the control and retain the saw-mill as hereinbefore directed."

Your petitioner would state as a reason why said last mentioned order was not carried out by the commodore to whom it was directed was, from his having acted on the first mentioned order of the 1st of December, 1849, that when he received that order he addressed Robert A. Parker the following letter, in the words and figures following :

"FLAG-SHIP SAVANNAH,
"*Benecia Roads, January* 28, 1850.

"SIR: Please take notice (the Hon. Secretary of the Navy having instructed me by letter dated December 1, 1849, to place the steam saw-mill belonging to the Navy Department of the United States recently set up at Sancelito by you, under your written contract made and entered into with me on the 7th day of April, 1849,) that you are hereby required to transfer and deliver over to the Purser or Navy Agent for the port of San Francisco on the 30th day of April ensuing the date hereof, or to such other persons as may be duly authorized to receive the aforesaid mill with all things pertaining thereto, according to the terms, conditions, and true intent and meaning of said contract above cited.

THOS. AP. C. JONES."

"Mr. ROBERT A. PARKER."

That said Parker accordingly surrendered the saw-mill, gave up and forfeited contracts for lumber, &c., and thereby became broken up in his said business and seriously damaged in his affairs, having expended a large sum of money in the erection of said mill and the house covering the same, &c.

That by virtue of the provisions of said contract referees were appointed on the part of the United States, John A. Hambleton, United States Navy Agent, and on the part of Parker's assignee, Talbot H. Green, an eminent merchant of San Francisco. That said referees went into a careful investigation of all the facts of the case; examined books of entry and took testimony, and finally made the following award:

"SANCELITO, July 9, 1850.

"We, the undersigned referees in a case of the United States Navy Department and James McCormick, assignee of R. A. Parker, respecting a saw-mill belonging to the United States government at Sansilito, California, after a careful examination of the contract in the premises and of all the accounts exhibited, find in the true meaning and spirit of that contract as follows:

The whole expense of erecting the said mill and putting it in operation was the sum of.....	$45,951 22
The whole receipts, earnings, and property on hand turned over to McCormick, per inventory herewith, was the sum of.....	20,184 55
	$25,766 67

We therefore find a balance due James McCormick, assignee of Robert A. Parker, of twenty-five thousand seven hundred and sixty-six dollars and sixty-seven cents.

JNO. N. HAMBLETON,
Referee on the part of the Navy Department.
TALBOT H. GREEN,
On the part of Robert A. Parker's assignee."

That it was for this amount that McCormick drew on the Navy Department at Washington when his draft was refused payment, and thereupon made application to Congress for relief, as has been stated in the original petition in this case. On the 22d day of December, 1851, the memorial was referred to the Committee on Naval Affairs, and on the 13th of January next ensuing the following report was made, being Report No. 34, 32d Congress, 1st session.

Mr. BOCOCK, from the Committee on Naval Affairs, made the following report:

The Committee on Naval Affairs, to whom was referred the petition of James McCormick, assignee of Robert A. Parker, asking indemnity for the breach of a contract made by said Parker with Commodore Thomas ap Catesby Jones for the Navy Department of the United States government, providing for the setting up and working of a saw-mill, the property of the United States, ask leave to submit the following report:

It appears to the committee that the following are the facts in this case: During the war with Mexico, declared in 1846, and which was terminated by the treaty of Guadaloupe Hidalgo, ratified in 1848, the United States assembled a considerable naval force on the coast of California. In the year 1849, aforesaid, and before the termination of the war, the Secretary of the Navy, the Hon. John Y. Mason, with a view to supply the necessary lumber for the said naval forces of the United States on the California coast, caused a steam saw-mill to be sent there. It was ordered that it should be placed under the control of Commodore Thomas ap Catesby Jones, then in command of the Pacific squadron, and of the naval forces in California.

The duty of Commodore Jones was, to employ the said mill in such manner as to accomplish the purpose for which it was sent to the Pacific, and his authority was commensurable with his duty.

To have set up and worked the mill for government purposes exclusively, would have required the employment of a sufficient force to erect the necessary buildings and fixtures; the supplying of said force with materials for their work, and with provision for their support while so engaged; and after the mill should have been put in operation, it would have required the employment and supply of a force sufficient to tend it, and furnish it with the requisite timber. At that time it was extremely difficult to procure labor for government purposes at any price, and it could not be done at all except at very great cost. Supplies of provision were also very high. Under these circumstances, Commodore Jones, finding it impracticable to have the mill set up and worked on government account exclusively, acting on behalf of the Navy Department of the United States government, entered into a contract with a Mr. Robert A. Parker, which was dated on the 7th of April, 1849, and which stipulated that the said Parker should set up and work said mill for eighteen months from the first day of May then ensuing, viz: in 1849. The following additional stipulations were embraced in said contract:

The said Parker was required to have said mill ready for operation within four months from the first day of May, 1849; that is, by the first day of September, 1849. From the commencement of sawing, he was to be allowed the exclusive use of it for the space of three months. After the last mentioned period should elapse, his undertakings was, "to furnish upon the order or requisition of any commanding officer of the United States navy in the Bay of San Francisco or at Monterey, such sawed timber for the use of the navy as the mill may be able to cut from any timber on hand, or which may

be sent to the mill by such naval commander, to be used ashore or afloat, *but for naval purposes only*, as he may require, the price of which shall not exceed cost and charges of procuring, transportation and sawing." Commodore Jones made this arrangement, believing that he had ample authority to do so, and that it was best for the United States government. But he was careful to reserve to the government the right to break up the arrangement whenever it should think proper; thus providing for any difference of opinion as to the rightfulness or expediency of the arrangement between himself and the department, and also for any unforeseen contingency which might arise, calling for the exclusive use of the mill for government purposes. It was therefore stipulated further in the said contract, that "if, contrary to all reasonable expectation, the government should require the steam engines, mills, &c., for their own use, before the expiration of the contract, in that case, provided the mills have not cleared all costs, &c., then a referee shall be appointed by the parties respectively to ascertain and name the sum, if any, necessary to reimburse the party aforesaid. It did happen that, contrary to the expectation of the parties aforesaid, the contract was broken up long before its expiration by the Secretary of the Navy. The Hon. John Y. Mason, having retired from the Navy Department about March, 1849, was succeeded by the Hon. William B. Preston in said office. The latter gentleman, by order dated December 1, 1849, directed Commodore Jones "to place the saw-mill in charge of the navy agent or purser at San Francisco as government property." When this order was issued, Mr. Preston was evidently not aware of the arrangement which had been made between Commodore Jones and Mr. Parker. When informed of it he attempted, by a subsequent order, to prevent said arrangement from being interfered with in case the mill had not cleared the expense of setting up, working, &c. The last order was dated March 12, 1850, and was too late. Under the order of December 1, 1849, Commodore Jones had, on the 28th of January, 1850, given notice and broken up the contract. The mill had been ordered to be given up, contracts for lumber to be sawed had been forfeited, as well, doubtless, as contracts to supply plank and lumber. The damages had then been incurred. Under the clause of the contract providing for referees, as above set out, Commodore Jones selected, on the part of the United States government, John W. Hambleton, then navy agent at San Francisco; and Mr. McCormick, who, as the assignee of Robert A. Parker, had succeeded to his right, selected, on his part, Talbot H. Green, an eminent merchant of that place.

Said referees proceeded regularly to the discharge of the duty imposed upon them, and agreed upon an award on the 9th day of July, 1850.

Said award ascertained that the whole expense for erecting the saw-mill and putting it in operation, was.....	$45,951 22
And that the whole receipts, earnings, and property on hand turned over to Mr. McCormick, was.....	20,184 54
The amount to be paid McCormick, as assignee of Parker, was thus fixed at.....	25,766 67

Application was shortly thereafter made to the Navy Department of the United States government for the payment of said award, and the same was refused.

Now, it appears to your committee that, upon every principle of law and justice, the said award ought to be paid, unless upon one of the three contingencies following, viz:

1st. That Commodore Jones had no sufficient authority to make said contract; or,

2d. That it was first violated by Parker; or,

3d. That the award was fraudulent.

Now, it is not pretended anywhere, or by anybody, that either of the two last-named contingencies happened.

Parker seems to have proceeded regularly forward with the execution of the contract on his part till arrested by the order from the Navy Department; and the award is impeached by no one, either for being fraudulent, illegal, or inequitable. It was signed not only by Green, the referee of Parker, but also by Hambleton, the referee on the part of the government, a gentleman who appears to have had the full confidence of the Navy Department. Not only does Hambleton agree to it, but Commodore Jones alleges nothing against it.

The only remaining ground for refusing to pay is, that Commodore Jones had no authority to make said contract originally; and this is the ground actually taken by the Navy Department, as will appear by the letter addressed on the 7th January, 1851, to the Hon. J. M. Botts by the Hon. Wm. A. Graham, who has succeeded Mr. Preston as Secretary of the Navy.

Can that ground be maintained? Your committee think not. When it is considered, that, in the absence of a regularly established government in California, Commodore Jones was invested with plenary military authority there, it would strike any mind as paradoxical that he should stand as the chief representative of the government in enforcing order, punishing crime, and protecting life and property, and yet should not have authority to rent out a government saw-mill. But coming down to his special authority on this subject, how does the case stand? It seems that the saw-mill was placed in the charge of Commodore Jones without written instructions, but with the general direction that he should so employ it as to furnish the necessary timber for the naval purposes of the United States on the California coast.

It would seem to your committee that such authority would necessarily extend to paying for the setting up and working of the mill out of its own proceeds. If it was more expedient to pay for the labor necessary for the purposes aforesaid, with timber than with money, such a payment would be legitimate; and if it suited better to ascertain the amount of timber to be paid by the length of time the mill would be employed in sawing it, rather than by measured quantity, there could be no objection to doing so. That is this case, except that here both parties were made liable to damages for a breach of the contract, which liability the government incurred, and not the other party. If to this view of the case we add the consideration already alluded to, that it was impracticable to procure force to set up and

work the mill for the government exclusively, and that, without resorting to such an expedient as was resorted to, the object of the department would have failed entirely, the case assumes a clear and distinct form, and the authority becomes evident.

But let us look to the authority of the secretaries themselves, who were more particularly involved in the transaction. The saw-mill was placed in the charge of Commodore Jones, by order of Mr. Secretary Mason. In the absence of written instructions, it would seem that he would be best able to declare the extent of those given. One of the committtee (Mr. Bocock) addressed a letter of inquiry to Mr. Mason on the subject in the latter part of the last session of the thirty-first Congress, the case then being under consideration before the committee. Mr. Mason's answer, dated February 13, 1851, is on file among the papers. In it he says, "In the prosecution of the war with Mexico, a very large naval force had been collected on that station, (Pacific coast,) and it was regarded a wise measure to send a steam saw-mill to prepare lumber for the use of the squadron. Commodore Jones was ordered as the commander-in-chief of the naval force on that station; the steam machinery sent out for preparation of timber for repair was placed, of course, under his *general* direction. *If, under the circumstances which he found to exist, he deemed it better to have the engine worked by contract than to employ the labor and superintendence with the necessary buildings on account of the government, I do not doubt that he had the authority, subject to the controlling power of the Navy Department.* Such is the opinion of him from whom emanated this authority, in relation to its extent. And Mr. Secretary Preston himself, the successsor of Mr. Mason, admitted the authority indirectly on two different occasions. In his despatch of December 18, 1849, in which he orders the mill to be placed in charge of the navy agent or purser at San Francisco, he first requests Commodore Jones to report "the condition of the government steam saw-mill sent to California in 1848; *under what arrangement it was erected, for whose benefit it had been worked,* and its present state and condition." Without knowing what had been done, he seems to have anticipated, as natural and possible, an arrangement of the kind actually made. And after hearing distinctly what had been done, he says, in his order of March 12, 1850, "If, under the terms of the contract entered into with Mr. Parker, the mill has already relieved itself, you will resume the possession of the said saw-mill." Here he admits that the contract was binding so far as to impose liabilities on the mill, and directs that if said liabilities have not been removed, the mill shall be left in the possession of Mr. Parker. But this order, as above stated, came too late.

The opinion of Mr. Graham, who now with so much credit and honor presides over the Navy Department, is against the validity of the contract. He says, that "the commander of the squadron was not authorized to make any agreement by which the government was to incur a debt in setting it (the saw-mill) up for use, or in using it." But how will this position be maintained in the face of the fact, that to have worked it on government account exclusively, he must necessarily have incurred a greater debt than by entering into this

contract; and not to have worked it at all, would have been a clear violation of his instructions in their form and in their spirit. Had Mr. Preston not interfered, the contract would probably have turned out to be an advantageous one, and the liability on the part of the government is attributable to that interference and the time when it was made. Mr. Preston acted doubtless from the best convictions of his judgment upon the facts before him. He appears not to have been in possession of all the facts, and therefore the loss which springs from his action. With one additional view of the case, the committee will conclude its report.

Commodore Jones was in possession of the saw-mill, and was invested with such general authority in California as might well have iuduced even the most intelligent citizen to contract with him in relation to the use of said mill. Parker did so contract, and by a breach of contract on the part of the government he has sustained a heavy loss. Is it just and equitable on the part of the government now to disavow the authority of its agent, and to throw the said loss on him? Or is it just and equitable to disavow a contract with an individual, when he is clearly bound on his part? The referees having been duly chosen, if they had awarded against Parker, he would clearly have been concluded by the award, and could have asserted no further claim. Shall the government declare a reciprocal obligation? These questions, the committee think, must be answered in the negative. The award, though for a large amount, appears to have been fair and regular, and stands in every way unimpeached.

The committee therefore report the accompanying bill, entitled "A bill for the relief of James McCormick, assignee of Robert A. Parker.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated, be directed to pay to James McCormick, assignee of Robert A. Parker, or to his properly authorized agent, the sum of twenty-five thousand seven hundred and sixty-six dollars and sixty-four cents, with the interest thereon from the ninth day of July, one thousand eight hundred and fifty, it being the amount allowed to the said McCormick, assignee of said Parker, on the said ninth day of July, one thousand eight hundred and fifty, by referee duly appointed between them, as damages for breach of a contract before that time entered into by the said Robert A. Parker of the one part, and Commodore Thomas ap Catesby Jones, acting under authority from the Navy Department of the United States, on the other part, for setting up and working a saw-mill in California, which contract was broken by direction of the said department of the government of the United States."

That before said bill was reported by Hon. Thomas S. Bocock, the then chairman of the Naval Committee, the question of Commodore Jones's *authority* was raised, when the said chairman addressed a letter, dated February 11, 1851, to Hon. John Y. Mason, then in Richmond, Va., under whose administration of the Navy Department the

said saw-mill was sent out, and desiring to know his views as to the extent of the Commodore's authority in the premises when the late Secretary addressed in reply the following letter:

RICHMOND, *February* 13, 1851.

MY DEAR SIR: I have received your favor of the 11th instant, and do not hesitate to reply to your inquiry. While I was in the Navy Department, it became a duty of no small importance, in my judgment, to receive a supply of lumber on the west coast or coasts of California for naval purposes. In the prosecution of the war with Mexico, a very large naval force had been collected on that station, and it was regarded a wise measure to send a steam saw-mill to prepare lumber for the use of the squadron. Commodore Jones was ordered as the commander-in-chief of the naval forces on that station; the steam machinery sent out for preparation of lumber for repairs was placed, of course, under his general direction. If under the circumstances which he found to exist, he deemed it better to have the engine worked by contract than to employ the labor and superintendence, with the necessary buildings, on account of the government, I do not doubt that he had the authority, subject to the controlling power of the Navy Department. But if in his discretion the Secretary of the Navy interfered and put an end to the contract on the part of the government, the other party to the contract is entitled to indemnification, according to the terms and stipulations of the contract itself.

I left the Navy Department in March, 1849, and I perceive that the contract is dated in April of that year. I give you my opinion on the extent of power conferred on Commodore Jones, by my instructions, without an accurate knowledge of the subsequent order of the Navy Department, and without any wish to be understood as passing judgment on those official acts.

I am, very sincerely, your friend,

J. Y. MASON.

Hon. THOMAS S. BOCOCK,
House of Representatives.

Your petitioner further represents that the said bill having been lost in the House of Representatives for want of time to pass it, and not from any want of merit in your petitioner's claim or demand upon the government of the United States, the memorial in said case was again presented to Congress, and on the 14th day of December, 1853, was referred to the Committee on Naval Affairs in the House of Representatives; that said committee without making a new report upon the claim instructed their chairman, the Hon. Thos. S. Bocock, to move the following amendment to the naval appropriation bill.

"For the amount due James McCormick, assignee of Robert A. Parker, under a contract for the employment of a saw-mill on the coast of California, made with Commodore Thomas ap C. Jones, late commander of the Pacific squadron, twenty-five thousand seven hundred and sixty dollars and sixty-six cents." Which said amendment and the circumstances attending the same is herewith filed, being in the handwriting and over the signature of the said Thos. S. Bocock, the honorable chairman of said Naval Committee. That he did not suc-

ceed in said amendment; the session of '52 and '53 being a short session of Congress, and the naval bill coming up late in the session, it was again lost for want of time to pass it.

And your petitioner, in further amending the original petition in this case, would state, that he is now the only person interested in the ownership of said claim, and having amended said original petition in respect to all matters required, he prays judgment in his behalf for the amount of said award, with interest from the rendition of the same, and that the same may be reported to Congress for payment.

ARISTIDES WELCH,
By S. S. WILLIAMS, *Solicitor.*

Memorial of James McCormick, of California, asking payment of a sum of money, found due by an award made in pursuance of a contract with the commander of the Pacific squadron in the year 1849.

To the Senate and House of Representatives of the United States:

Your memorialist respectfully represents that in the year 1849, Commodore Jones, then in command of the American squadron in the Pacific ocean, had in his possession a steam saw mill, belonging to the government of the United States, which he found, in the then condition of California, it was altogether impracticable to employ, as was, perhaps, originally contemplated. Having no means within his control to work the mill for the exclusive benefit of the government, and not being able to store it away, except at an enormous expense, to say nothing of the damage it would sustain from rust and otherwise, (by not being in use,) and the total failure of the government to derive any the least advantage from it, unless it could be put in operation, in the exercise of a sound discretion he entered into a contract with Robert A. Parker, by which he rented for the term of eighteen months the said mill, fixtures, &c., in consideration of certain services to be performed, and timber to be furnished for the use of the navy, as will more fully appear by reference to the contract itself, a copy of which is herewith filed.

In that contract it was further stipulated and agreed, that "if, contrary to all human expectations," the government should require the mill for its own use before the expiration of the term fixed upon, then a referee should be appointed by the parties, respectively, to ascertain the sum (if any) necessary to reimburse the lessee in all the cost, charges, &c.; which when thus ascertained were to be paid by the United States to the said Robert A. Parker or his assigns; and for the faithful performance of the contract on the part of Parker, a penalty was attached in the contract.

In pursuance of the obligations entered into by the lessee, he proceeded at great expense and labor (common hands then hiring for ten dollars, and in some instances twenty dollars per diem) to erect buildings, &c., for the operation of the mill, and just as he had completed them, and was about to realize his anticipated profits, an order was received by Com. Jones, from the then Secretary of the Navy, (Hon.

William B. Preston,) directing him to demand the surrender of the mill to the purser or navy agent at San Francisco, thus annulling the contract, greatly to the detriment of the said Parker, as well as to the government itself.

The notice was accordingly given by Com. Jones to Parker, who thereupon abandoned the further execution of his purpose, forfeited his contracts for timber, suffered materially from his heavy outlays, and when all his operations had been forsaken the Secretary reversed his own decision, recognized the authority under which the contract was made, and directed Com. Jones to permit the mill to remain in Parker's possession: but it was too late; the time had passed by when it was possible for him to secure his logs and materials for use, and in that state of things resort was had to that feature of the contract which provided that, in such a contingency, referees should be appointed to ascertain the damages, &c.

In the meantime the undersigned had become the assignee of Parker, the original lessee, and on his part, he selected Talbot H. Green, a merchant of the highest standing in San Francisco, while on the part of the government, Com. Jones selected John W. Hambleton, then acting navy agent in California, than whom no man is believed to stand higher with the department to which he is attached; and as the result of their deliberations they finally awarded to the undersigned the sum of twenty-five thousand seven hundred and sixty-six dollars and sixty-four cents ($25,766 64) as the amount justly due him under the contract, which for the reasons set forth by the letters of the present Secretary of the Navy, he declines to pay: and in this connexion your momorialist begs leave to refer to the letter herewith filed, of the Hon. John Y. Mason, under whose administration of the Navy Department, and under whose instructions Commodore Jones was acting at the time the contract was entered into.

And as your memorialist holds the reasons of the Secretary for withholding payment of the award referred to as altogether insufficient and unsatisfactory, inasmuch as if the award of the rejected referees had been against your memorialist, he would have been concluded and barred from making any further demand for the serious losses he had sustained by reason of his contract, he respectfully asks that Congress will pass a bill directing the amount of said award to be paid to him or his legal representatives; and as in duty bound, &c.

JAMES McCORMICK,
By his attorney.

This indenture, made and entered into this seventh day of April, in the year of our Lord one thousand eight hundred and forty-nine, between Commodore Thomas ap C. Jones, commander-in-chief of the United States naval forces on the Pacific station, for and on behalf of the United States Navy Department, on the one part, and Robert A. Parker of the other part, witnesseth:

That the said party of the first part, Commodore Jones, for and in consideration of certain services to be hereinafter mentioned, does grant and give to the said Parker the use of a certain steam saw mill,

with the engine, machinery, fixtures, and tools thereunto belonging or accompanying the same, belonging to the United States Navy Department, for the space of eighteen months from the first day of May next ensuing; the said Parker binding himself and his assigns to set up the said mill and put the same in operation within four months from the first day of May aforesaid. A minute inventory of the machinery, tools, and fixtures, shall be taken in duplicate, the said Parker binding himself and his assigns to return the same, according to the inventory aforesaid, to the proper officer of the United States in like order and condition in which he received them, the usual wear and tear in such cases only excepted, whenever, under this contract, he can be called on to do so.

For the term of three months from the commencement of sawing no rent shall be exacted, but from and after that time the said Parker binds himself and his assigns to furnish, upon the order or requisition of any commanding officer of the United States navy in the bay of San Francisco or at Monterey, such sawed lumber for the use of the navy as the mill may be able to cut from any lumber on hand or which may be sent to the mill by such naval commander, to be used ashore or afloat, *but for naval purposes only*, as he may require, the price of which shall not exceed cost and charges of procuring, transporting, and sawing; the said lumber for naval purposes is to be received at the mill, and the quantity of lumber so called for is not to exceed, in any one month, one-third of the average capacity of the mill for sawing in that period.

It is understood that, in addition to the saw-mill, a grist-mill not yet arrived has been ordered to this station. Should the same arrive in any reasonable time, it is understood and agreed that it also shall be turned over to the said Parker, who shall put it up and run it in connexion with the saw-mill for the same length of time; for the use whereof he (the said Parker) agrees and contracts to grind into breadstuff or horse feed any grain sent to the mill suitable therefor, for the use of persons or teams in the employment of the navy at or about San Francisco, free of toll, to any extent not exceeding two days in any one week or at the rate thereof.

If, contrary to all reasonable expectation, the government should require the steam engine, mills, &c., for their own use before the expiration of this contract, in that case, provided the mills have not cleared all costs and charges for setting up and putting to work, and a fair business profit thereon, referees shall be appointed by the parties respectively to ascertain and name the sum, if any, necessary to reimburse the party aforesaid in all the costs and charges and profits aforesaid, which, when duly ascertained, will be paid by the United States to the aforesaid Robert A. Parker or his assigns.

For the faithful performance of all the undertakings on his part, as herein contained, the said Robert A. Parker binds himself or his assigns in the penal sum of one thousand dollars, lawful money of the United States.

Witness our hands and seals at San Francisco, California, the day and year first above written.

THOMAS AP C. JONES, [L. S.]
ROBERT A. PARKER, [L. S.]

SANCELITO, *August* 20, 1849.

For a valuable consideration I have this day sold to James McCormick all my right, title, and interest in this contract.

In witness whereof, I have set my hand.

ROBERT A. PARKER.

Know all men by these presents that I, James McCormick, of San Francisco, State of California, in consideration of the sum of four thousand five hundred dollars to me in hand paid by Aristides Welch, of San Francisco and State aforesaid, the receipt of which is hereby acknowledged, do hereby sell, assign, set over, and transfer unto the said Aristides Welch, his heirs, and assigns, all my interest and claim in the foregoing written agreement, and everything therein contained, and all benefit and advantage which may be derived therefrom, together with all my interest in a certain award made on the day of one thousand eight hundred and by John N. Hambleton on the part of the United States, and Talbot H. Green on my part, as the assignee of Robert A. Parker, for

And I constitute the said Aristides Welch my attorney irrevocably, with full power and in my name to do everything necessary for the complete recovery and enjoyment of all my rights and interest under the said foregoing agreement and the said award, and all the benefit and advantage that may be derived therefrom, giving and granting to my said attorney full power and authority to do all acts necessary to be done in as full and ample a manner as I could do, and I do hereby ratify and confirm all the acts of my said attorney.

Witness my hand and seal this twenty-eighth day of August, one thousand eight hundred and fifty one.

JAMES McCORMICK, [L. S.]

Sealed and delivered in presence of
JOHN A. TERHUNE,
JOHN W. HUDSON.

STATE OF CALIFORNIA, *County of San Francisco:*

On this 19th day of September, A. D. 1851, personally appeared before me the county clerk of said county, Robert A. Parker, known to me to be the person who is described in and who executed the foregoing instrument of writing, who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[L. S.] Witness my hand and seal of office this 19th day of September, 1851.

JOHN E. ADDISON, *Clerk.*
By JAS. D. GALBRAITH,
Deputy Clerk.

On this 28th day of August, A. D. 1851, before me, a notary public duly commissioned and sworn for the county of San Francisco,

California, personally came James McCormick, known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[L S.] Witness my hand and seal of office.

LUCIAN HERMANN,
Notary Public.

STATE OF CALIFORNIA, *County of San Francisco, ss:*

I, John E. Addison, county clerk of San Francisco county, hereby certify that Lucian Hermann, whose name is attached to the foregoing acknowledgment, was at the time of signing and is now a notary public in and for the county of San Francisco, duly qualified, commissioned, and sworn, and that his signature is genuine.

[L. S] In testimony whereof I have hereunto set my hand and affixed the seal of the county court of San Francisco county this 3d day of September, A. D. 1851.

J. E. ADDISON,
Per J. Q. PAPY,
Deputy Clerk.

SANCELITO, *July* 9, 1850.

We the undersigned referees in a case of the United States Navy Department, and James McCormick, assignee of R. A. Parker, respecting a saw-mill belonging to the United States government, at Sancelito, California, after a careful examination of the contract, in the premises, and of all the accounts exhibited, find in the true meaning and spirit of that contract, as follows:

The whole expense for erecting the saw-mill, and putting it in operation, was the sum of.....	$45,951 22
The whole receipts, earnings, and property on hand, turned over to Mr. McCormick, per inventory herewith, was the sum of.....	$20,184 58
	$25,766 64

We therefore find a balance due James McCormick, assignee of Robt. A. Parker, of twenty-five thousand seven hundred sixty-six dollars and sixty-four cents.

JNO. W. HAMBLETON,
Referee on the part of the Navy Department.
TALBOT H. GREEN,
On the part of Robt. A. Parker's assignee.

SANCELITO, *July* 9, 1850.

Inventory of effects purchased for the steam saw mill at Sancelito, all of which have been used and some rendered worthless, which I take at the price affixed by the referees:

One boat	$245 00	Rope and blocks	28 00
One stove	10 00	One skiff	10 00
One pump and lead pipe	42 00	273 pounds chain	80 00
One bug saw	70 00	One anchor	20 25
And other fixtures	39 45	Belting	17 00
Cooking utensils	23 75	Iron shaft	20 70
Sheet iron	73 65	Wheelbarrow	32 75
Tool chest	10 00	Iron and steel	17 50
Picks	9 00	Iron	30 38
Files, carving knife, and fork	6 00	Grindstone	5 00
Bowls	3 25	Pots $9; iron $27	36 00
Coffee pot and mill	4 00	Plates and dishes	5 00
Goat skins for lacing	13 00	Screws for carriages, &c	8 00
Oars $7; oxbows $12	19 00	Leather belting and leather	24 62
Circular saw	30 00	40 fasts, hawser	40 25
Oxen, chains and yokes	2,500 00	Log trucks	140 00
			$3,613 55

The appraised value is $2,000, at which the referees decided, James McCormick, the assignee of Robt. A. Parker, should receive them.

JAMES McCORMICK.

SANCELITO, *July* 9, 1850.

The original of the within inventory has been charged to James McCormick, in the settlement between the United States Navy Department and him as assignee of Robert A. Parker, and that he is entitled to the within named articles.

JNO. W. HAMBLETON,
Referee on the part of the Navy Department.
TALBOT H. GREEN,
Referee on the part of the assignee of R. A. Parker.

The above is a correct copy of the original.

JOSEPH WILSON,
United States Navy Agent.

WM. L. HUDSON,
Commander and senior officer present.

U. S. SHIP VINCENNES, *August* 26, 1851.

FLAG-SHIP SAVANNAH,
Benicia Roads, January 28, 1850.

SIR: Please take notice (the honorable Secretary of the Navy, having instructed me by letter dated December 1, 1849, to place the steam saw-mill, belonging to the Navy Department of the United

States, recently set up at Sancelito, by you under your written contract made and entered into with me on the 7th day of April, 1849,) that you are hereby required to transfer and deliver over to the purser or navy agent for the port of San Francisco, on the 30th day of April next ensuing the date hereof, or to such other persons as may be duly authorized to receive the aforesaid mill, with all things pertaining thereto, according to the terms, conditions, and true intents and meaning of said contract above cited.

THOMAS AP C. JONES.

Mr. ROBERT A. PARKER.

SAN FRANCISCO, *April* 26, 1850.

SIR: I enclose an extract from a letter received from the Navy Department by the last mail, relating to your contract with me for the use for a limited time of a steam saw-mill belonging to the United States. Be pleased to furnish me, with as little delay as possible, the fullest information you can, to enable me to comply with the Secretary's letter, as well as to regulate further action in regard to the mill and its employment.

Very respectfully, &c.,
THOMAS AP C. JONES.
Commander-in-chief United States Naval Forces Pacific Ocean.

Mr. ROBERT A. PARKER,
Of the Steam Saw-Mill, San Francisco.

Extract of a letter from the honorable Secretary of the Navy, addressed to Commodore Thomas ap C. Jones.

UNITED STATES NAVY DEPARTMENT,
Washington, March 12, 1850.

"SIR: Your despatch No. 91 of the 28th of January, with its enclosure has been received.

"You will be pleased to cause an accurate account to be made, and report to the department of the cost and charges of setting up and putting in operation the steam saw-mill at San Francisco, for the purpose of ascertaining whether the mill has cleared itself."

"If under the terms of the contract entered into with Mr. Parker, the mill has already relieved itself, then you will resume the possession of the said saw-mill, and, if your means will enable you to do so, you will use the same for the preparation of such timber, &c., as may be necessary for the purposes of the squadron under your command.

"If, however, upon a careful examination, it is ascertained that Mr. Parker would be still entitled to remuneration thereunto, then you are ordered to permit the mill to remain in his possession until he is reimbursed for the costs and charges of its erection under the contract,

[illegible]

[illegible]

[illegible]

States, recently set up at Sancelito, by you under your written contract made and entered into with me on the 7th day of April, 1849,) that you are hereby required to transfer and deliver over to the purser or navy agent for the port of San Francisco, on the 30th day of April next ensuing the date hereof, or to such other persons as may be duly authorized to receive the aforesaid mill, with all things pertaining thereto, according to the terms, conditions, and true intents and meaning of said contract above cited.

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"If, however, upon a careful examination, it is ascertained that Mr. Parker would be still entitled to remuneration thereunto, then you are ordered to permit the mill to remain in his possession until he is reimbursed for the costs and charges of its erection under the contract,

at which time you will assume the contract, and retain the saw-mill, as hereinbefore directed."

True copy. Test:

J. A. SHERBURNE, *Commandant's Clerk.*

NAVY DEPARTMENT, *December* 1, 1849.

SIR: Information has reached the Department, of the death of acting carpenter John Brown, who was ordered on the 29th of July, 1848, to report to you for duty in erecting a steam saw-mill, or such other duty as you may assign him. It is stated that he died at San Francisco, on the 29th or 30th of September last. You will be pleased to direct the navy agent or purser at San Francisco to obtain possession of the effects of the late John Brown, acting carpenter, and to dispose of them to the best advantage for the benefit of his heirs or legal representatives, or place them at the disposal of Colonel Gray, the alcalde of San Francisco.

Be pleased to report to the department your proceedings in this case, as well as the condition of the government steam saw-mill, sent to California in 1848; under what arrangement it was erected, for whose benefit it has been used, and its present state and condition. You will also be pleased to place the saw-mill in charge of the navy agent or purser at San Francisco, as government property.

I am, very respectfully, your obedient servant,

WM. BALLARD PRESTON.

Commodore THOMAS AP C. JONES,
Commanding United States Squadron Pacific ocean.

FLAG SHIP SAVANNAH,
Benicia, June 22, 1850.

SIR: I enclose herewith extracts from two orders from the honorable Secretary of the Navy in relation to a certain steam saw-mill erected at Sancelito under my contract with Mr. R. A. Parker,(No. 1 of the accompanying series.*) My brief No. — is a very liberal statement of what might and ought to have been the earnings of the mill, from which it is manifest that the assignees of Mr. Parker can have no just claim to one cent upon the United States for erecting the mill, nor for the house which covers it.

You will therefore require Mr. Parker's agent or assignee to deliver over to you the mill and all appurtenances thereunto belonging, according to the terms of the contract, on the first day of July; and will thereafter dispose of the mill as the Navy Department or Commander Charles S. McCauley, my successor, may direct.

Should Mr. Parker's assignees demur to this arrangement, as I have reason to believe they will, you will consider yourself fully authorized,

* From 1 to 11, exclusive of brief.

and hereby appointed, the referee on the part of the United States navy, under the contract "to ascertain and name the sum, if any, necessary to reimburse the party aforesaid," and as such will meet any referee named by the other party; and, in case of any difference of opinion, you will co-jointly elect an umpire, who had better be a legal gentleman of good standing.

I am, respectfully, &c.,

THOS. AP C. JONES,
Commander in chief Pacific Squadron.

Purser JOHN N. HAMBLETON,
United States Navy, San Francisco.

SANCELITO STEAM SAW-MILL, *June* 27, 1850.

SIR: As there is a strong probability that the machinery of this mill will not be put in operation for a considerable length of time, I would respectfully recommend that the piston be removed from the cylinder of the engine, and all of its rubbing parts, as well as the bright work, be covered with a mixture of white lead and tallow. The packing should also be removed from all of the stuffing boxes.

The boilers should, in my opinion, also receive a coating of tallow on their internal surfaces, and the smoke-pipe painted with coal tar or other mixture suitable for the purpose. The machinery directly connected with the saw will require but little attention.

I am of the opinion that the above recommendations should be carried into effect at an early moment, to insure the good preservation of the engine and its appendages.

I am, respectfully, your obedient servant,

EDWARD A. WHIPPLE,
Second Assistant Engineer, U. S. Navy.

Lieut. JAMES MCCORMICK,
United States Navy, Sancelito.

The above is a correct copy of the original.

JOSEPH WILSON,
United States Navy Agent.
W. L. HUDSON,
Commander, senior naval officer present.

UNITED STATES SHIP VINCENNES, *August* 27, 1851.

SANCELITO STEAM SAW-MILL, *July* 3, 1850.

SIR: In compliance with a request made by you for my opinion regarding the condition of the machinery of this mill, for the purpose of forwarding it to the commodore of this station, I have to say that I consider the engine, boilers, and other machinery to be in a fair condition and in good running order.

I am, respectfully, your obedient servant,

EDWARD A. WHIPPLE,
Second Assistant Engineer, U. S. Navy.

Lieut. JAMES MCCORMICK, *United States Navy.*

The above is a correct copy of the orginal.

JOSEPH WILSON,
United States Navy Agent.
W. L HUDSON,
Commander, senior naval officer present.

UNITED STATES SHIP VINCENNES, *August* 27, 1851.

SAN FRANCISCO, *August* 31, 1850.

MY DEAR SIR: I have been employed to present a claim founded upon the enclosed documents to the Navy Department. If the claim is recovered I am to receive two thousand dollars out of the proceeds; and this I propose to divide with you, if you will take charge of it at the department. Nothing can be more clear than the justice of the claim, and it cannot be rejected without invalidating the good faith of the government.

As you will perceive by document No. 1, Commodore Jones made a contract with Mr. Rob't A. Parker, dated April 7, 1849, in relation to a saw-mill sent out to San Francisco by the government of the United States. I was personally cognizant of this transaction at the time it was executed, and I believe that it was not only perfectly legitimate on the part of Commodore Jones, but that it was the wisest and best disposition that could possibly have been made of the mill. The navy had no earthly use for it, and to have stored it in San Francisco, would have cost the government certainly not less at that period than five thousand dollars a year. By this arrangement the machinery was not only secured and protected without expense to the government, but a positive rent was provided for. The commodore wished to provide for the resumption of the mill at any time by the government of the United States, and the lessee was very naturally unwilling to incur the vast expense of erection, when laborers were getting $10 a day, and mechanics twice as much, without some security for remuneration in the event of resumption on the part of the government before the expiration of the lease; hence the clause in the contract in reference to this point. Owing to the difficulties of procuring the necessary building and other materials, the mill was not ready for operation till after the rainy season set in; and you know enough of that season to understand the impossibility of hauling logs during its continuance. Hence it was, that just as the proprietors of the lease began to hope to realize some portion of the heavy outlay that they had been compelled to encounter, came (document No. 2) commodore Jones's notice of resumption. The preparations for future operations were necessarily abandoned; the contracts for logs were forfeited at a heavy loss, and, in short, the inconveniences were such as the circumstances might be supposed to include, and such as the contracting parties foreseeing provided a remedy for. That remedy was pursued in the strictest and most legal manner; the referees were appointed in pursuance of the contract. Mr. Hambleton, the acting navy agent—no man is better and more favorably known to the department—was chosen on the part the government, and Mr. Talbot H. Green, known to you as one

of our first merchants, was selected by Mr. McCormick, the assignee of Mr. Parker. You have the award of these gentlemen in document No 5, in which they find a balance due Mr. McCormick from the United States of twenty-five thousand seven hundred and sixty-six dollars and sixty-six cents. I presume it will be only necessary to lay these facts before the department to obtain an order for the payment of the money. I have sent you copies of these papers, because I was afraid to risk the originals, and because duplicates are, or ought to be, on file in the Navy Department.

It was certainly a very hasty and unprecedented act upon the part of the government to demand the resumption of the mill at the time they did, and it would appear by No. 3 that they had repented of this determination; and Commodore Jones informs the party of the government's subsequent willingness to permit him to retain it until the expiration of the lease; but the announcement came too late; the demand for the surrender is dated January 28th, and the permission to retain is dated April 26th; it was hardly to be expected that the lessee would be prepared to resume the lease, after having had three months' previous notice that he must abandon it; and to my certain knowledge the commodore never expected that he would regard the second announcement, and only transmitted it as a matter of form; he always knew and held that the lessee and the government were both bound by the formal notice to quit of January 28th.

If, then, there has been mismanagement any wherein this matter, by which the government has been unnecessarily implicated in the payment of this considerable sum of money, it does not rest with the lessee or his assignee. They have always fairly and uprightly performed all their undertakings in this contract with the government agent, and all they ask of the department is to do that which any court of law would decree against an individual standing in the shoes of the government of the United States.

Your obedient servant,

CHAS. T. BOTTS.

DR. GWIN, *U. S. Senate.*

WASHINGTON, *January* 1, 1851.

SIR: Since my interview with you on yesterday, in which I was much surprised to learn that there was likely to be any difficulty on the part of the department, in recognizing the claim presented under the award made by the referees appointed under the contract between Commodore Jones and Mr. Parker, relative to the saw-mill in California, I have thought it due to the parties interested that I should submit the following views before your decision is rendered.

There are but two grounds, as it appears to me, upon which payment under the award can with any appearance of justice be withheld.

The first is, that there has been *fraud* on the part of the referees in making the award against the government; but as this is not assumed nothing need be said on that point.

The second is, that Commodore Jones had no authority to enter into the contract; and, if I understand it, the present Secretary does not himself assert that no such authority existed, but that his predecessor had disavowed it. I cannot know under what especial instructions Commodore Jones was acting in reference to the mill; if he had *express instructions* to make any specific use or disposition of the property other than that which was made, leaving to him no discretionary power, (which can scarcely be presumed,) then there might have been some plausibility in the disavowal of his authority on the part of Mr. Preston; although even in that case, it might with propriety be urged that the Secretary had himself subsequently recognized the contract by his despatch of the 12th of March, 1850, in which he directs Commodore Jones to permit the parties to remain in possession of the mill, until the terms of the contract are complied with, so far as relates to reimbursement; and especially might be urged the hardship and injustice that would result to the citizens in California, who should be required to know in advance, all the secret instructions of the Department, to one of its highest officers, on a remote station, in a far distant region of the country, in regard to so unimportant a matter as to the disposition he was authorized to make of a saw-mill, which the government had placed in his possession, and which, *as its agent*, it would be monstrous to presume he was not at liberty to use for the best advantage of the government, according to his own judgment and discretion: such an idea could not have been entertained there; such an idea cannot be indulged here, consistently with other powers exercised by him of which no question has been made; but the additional fact should not be lost sight of, that it was the best arrangement that could be made. Commodore Jones had no means of working it himself, and to have stored it away, while it would have been attended with enormous cost to the government, would not only have rendered it utterly useless, but have subjected it to rot, rust, and other material injuries. It was therefore better to rent it, on terms by which the government would have been fully remunerated, but for the inconsiderate and untimely interference of the then Secretary, who, by his instructions of the first of December, 1849, directed Commodore Jones to annul the contract, and take possession of the mill, which he himself afterwards was willing should remain in possession of the parties under the contract.

Upon him (the Secretary) alone rests the responsibility of any and all loss and inconvenience that the government has sustained; and it would be hard, indeed, if this responsibility and loss should be made to fall upon a private citizen who has faithfully and honorably fulfilled his part of the contract, as appears by the papers filed in the case.

But can it be true that Commodore Jones, who was in the command of the American squadron on the Pacific coast, exercising *plenary* military, and *most enlarged*, if not *plenary*, civil authority in California, was so circumscribed and limited in his discretionary power as to this minor and unimportant matter of renting out (or *selling*, if that were best,) a steam saw-mill, as to have no power to make a contract for its use, by which alone the government could derive a bene-

fit from it. And I submit, with all respect and proper deference, whether it becomes this government, or any of its departments, to resort to such a subterfuge, to avoid the payment of a legal and equitable obligation, arising under a legitimate contract, in order to shelter the department itself from the responsibility of its own indiscretion? I am happy to say that I feel confident that the present head of that department will never justify or sanction such an evasion of its obligations.

Would the government be keeping good faith with its citizens by adopting such a course? Can it be the purpose, or is it the policy of this government to take such advantage in a transaction of this nature, and thereby set an example that would encourage if not justify the citizens of this vast country, in their countless contracts with the government, to take every advantage in their power, contrary to the true spirit and meaning of their contracts? I trust that during the continuance of this administration—whatever may have been said of those that have precededed it, or whatever may be the course of those to come after it—the citizen may look for strict and impartial justice from a government (as far at least as executive action is concerned) which denies to the citizen the right of an appeal to the judicial tribunals of the country. Again, if it was the purpose of the Secretary to disavow the contract entirely, should he not have instructed Commodore Jones (when he was ordered to take possession of the mill) not to carry out that stipulation in the contract which provides for the appointment of the referees, in the event of the demand for the surrender of the property. Did he do it? And if not, has the government the right first to avail itself of the benefit that might result from the reference, which, if it had been in its favor, would have been conclusive against the other party, and afterwards refuse to comply with the award against itself, upon the ground that this officer, standing high in its confidence, and entrusted with the largest powers in regard to the most important and solemn matters, involving life, liberty, property, and public revenue, had no right to exercise the small discretion of renting out a steam saw-mill, which had been placed in his possession and confided to his care for the use of the government, and also did employ it, I repeat, to the best possible advantage, as there is every reason to believe?

Under all the circumstances, I respectfully submit that the honor and good faith of the government requires that this claim should be recognized, and the proper committee be recommended to make an appropriation for its payment during the present session of Congress.

Permit me to add that the opinion has become too general that the government does not deal justly by its citizens, and that everybody is therefore at liberty to swindle it that can. It is only by one course that so injurious an imprssion can be removed.

I am, with the highest respect, your obedient servant,

JOHN M. BOTTS.

Hon. SECRETARY OF THE NAVY.

NAVY DEPARTMENT, *January* 7, 1851.

SIR: Your letter of the 1st instant, in support of the claim of James McCormick, (late a lieutenant in the navy,) as assignee of Robert A. Parker, has been received.

The saw-mill, which gives rise to this claim, cost the government the sum of $6,300. It was paid for out of the appropriation for Mexican hostilities, and carried to California for naval uses merely.

The commander of the squadron was not authorized to make any agreement by which the government was to incur a debt, in setting it up for use or in using it. He had funds, or the means of raising them, for all purposes within his legitimate sphere, but no power to involve the government in a partnership operation of profit and loss in cutting and vending lumber. My predecessor in this department, on learning that such a contract had been made, disavowed it, and directed that the saw-mill, which was public property, should be demanded and taken possession of by Commodore McCauley, who succeeded to the command of the Pacific squadron. After this refusal by the department to admit the authority to enter into the contract, a reference was made to arbitration, likewise without authority, and the award on which you insist was the result. But Mr. McCormick, who was a lieutenant in the Pacific squadron when the contract and award were made, having taken an assignment from the contractor, Parker, retains the key of the mill-house, and is understood to hold possession as a means of enforcing the payment of the award. Now, I cannot consent that a naval officer shall, without the approbation of the department, either bind the government to a partnership in business, or to the performance of an award for the settlement of such business. Such an admission would not only be repugnant to the regulations of the service, but would impose burdens on the treasury to which no limit could be set.

In this very case, an article of property costing $6,300 is made by this contract and award to occasion a demand on the government for four times that amount.

But, independently of the objection to the demand itself, the department has no fund under its control for the payment of claims of this nature, and if it were recognized, it would still be necessary to ask an appropriation by Congress to pay it.

I am, with the highest respect, your obedient servant,

WM. A. GRAHAM.

Hon. J. M. BOTTS, *Richmond, Va.*

RICHMOND, *January* 10, 1851.

SIR: Your communication of the 7th instant has been received, and I regret the conclusion at which you have arrived relative to the award of the referees.

I am so ignorant of the rules of proceeding in the departments at Washington that I am not certain whether to regard the decision in this case as your own or as that of one of the accounting officers of the department which you have mentioned.

If you have not looked at the papers filed with some care may I ask that you will give them your personal attention? I ask this because I do not see that the claim has been rejected on grounds upon which the department can be justified, unless a different rule of interpretation and law prevails in affairs of government from those in private life between man and man.

Without opening the argument again in regard to the authority of commodore Jones to make the contract, I will take occasion to say that he went to the Pacific under Judge Mason's administration of the department, and under his instructions, and that I do not doubt he will unhesitatingly say that he does not regard that contract for the mill as in any manner transcending his authority or violating his instructions. Such a paper I hope to be able to obtain from him, and if it would exert any influence on your judgment in this case, I will forward, directly to the department if obtained.

My friend, Mr. Bocock, a member of the naval committee, has kindly proposed to bring the subject before that committee and ask an appropriation for its payment. I must ask therefore that the papers left with you may all be handed over to him, (when he calls,) including my letter of the 1st instant. If he should not call, please have them transmitted to him.

I am, with the highest respect, your obedient servant,

JNO. M. BOTTS.

Hon. WILLIAM A. GRAHAM, *Secretary of the Navy.*

NAVY DEPARTMENT, *January* 29, 1851.

SIR: In compliance with the request contained in a letter from the honorable J. M. Botts of Richmond, Virginia, of the 10th instant, transmitted by you to this department on the 27th instant, I have the honor to enclose herewith, the papers relating to the claim of James McCormick, assignee of R. A. Parker, growing out of the erection of a saw-mill in California, for the use of government, under the authority of this department.

I also transmit, agreeably to your request, a copy of Mr. Secretary Preston's letter to Commodore Jones, dated December 1, 1849.

I am, very respectfully, your obedient servant,

WM. A. GRAHAM.

Hon. THOMAS S. BOCOCK,
House of Representatives.

HOUSE OF REPRESENTATIVES, *February* 11, 1851.

DEAR SIR: Enclosed is a copy of a contract entered into on the 7th day of April, 1849, between Commodore Thomas ap Catesby Jones, on the part of the Navy Department, of the one part, and Robert A. Parker of the other part. It provides for renting a saw-mill, the property of the goverment, to the said Parker upon terms and conditions in the said contract particularly described. I believe that Com-

modore Jones received his instructions, and the authority under which he was acting, when he made said contract, from the Navy Department while you were at the head of it. I should be pleased to know what are your views of the extent of Commodore Jones's authority in the premises, and whether you regard it as having been sufficient to justify him in entering into said contract. I ask this information as a member of the Naval Committee of the House of Representatives, before whom this subject has been brought.

With the most sincere respect,

I am, your most obedient servant,

THOMAS S. BOCOCK.

Hon. J. Y. MASON.

RICHMOND, *February* 13, 1851.

MY DEAR SIR: I have received your favor of the 11th instant, and do not hesitate to reply to your inquiry. While I was in the Navy Department, it became a duty of no small importance, in my judgment, to receive a supply of lumber on the west coast, or coast of California, for naval purposes. In the prosecution of the war with Mexico, a very large naval force had been collected on that station, and it was regarded as a wise measure to send a steam saw-mill, to prepare lumber for the use of the squadron. Commodore Jones was ordered as the commander-in-chief of the naval forces on that station; the steam machinery, sent out for preparation of lumber for repair, was placed of course under his general direction. If under the circumstances in which he found to exist, he deemed it better to have the engine worked by contract than to employ the labor and superintendence with the necessary buildings on amount of the government, I do not doubt that he had the authority, subject to the controlling power of the Navy Department. That, if in his discretion, the Secretary of the Navy interposed and put an end to the contract on the part of the government, the other party to the contract is entitled to indemnification, according to the terms and stipulations of the contract itself.

I left the Navy Department in March, 1849, and I perceive that the contract is dated in April of that year. I give you my opinion on the extent of power conferred on Commodore Jones by my instructions, without any accurate knowledge of the subsequent orders of the Navy Department, and without any wish to be understood as passing judgment on those official acts.

I am, very sincerely, your friend,

J. Y. MASON.

Hon. THOMAS S. BOCOCK,
House of Representatives.

NAVY DEPARTMENT, *February* 20, 1851.

SIR: Agreeably to the request contained in your letter of the 18th instant, I have the honor to enclose herewith a copy of the letter addressed to this department, on the 1st of January last, by honorable

J. M Botts, on the subject of the claim of James McCormick, assignee of R. A. Parker.

I have the honor to be, very respectfully,
Your obedient servant,
WM. A. GRAHAM,

Hon. THOMAS S. BOCOCK,
House of Representatives.

RICHMOND, *February* 23, 1852.

DEAR COMMODORE: I wanted to have seen you very much before I left Washington, but you were not in when I went to your room.

Last Friday the saw-mill case came up in the House; Mr. Bocock, who has made a very good report upon it, was absent, and Mr. Stanton Chairman of the Committee on Naval Affairs, moved that the case be recommitted, on the ground, as he alleged, that he had heard there had been some fraud practiced in regard to it. I afterwards saw him, and it is evident that Mr. Meade has been making statements prejudicial to your honor. I would suggest that you see Mr. Stanton, and ask that Mr. Meade be invited to appear before the committee, with any evidence in his pssession that will establish the fraud, and that you be permitted to confront him. I learned also from the Secretary of the Navy that Mr. Meade had said the same to him. I suggest this, because I think your personal honor may be implicated if something of the sort is not done, and I cannot permit myself to question the result if it is done.

I am, very truly and respectfully, yours,
JOHN M. BOTTS.

Com. THOMAS AP CATESBY JONES.

NATIONAL HOTEL, *February* 25th, 1852.

SIR: The enclosed letter is this moment received, and, as an act of justice to myself, and to all others aimed at by the *ex parte* and malicious statements alluded to, I must beg the favor of you to ask the authority of the honorable House of Representatives for the Committee fully to investigate the matter in question, with power to send for persons and papers, in order that the truth or falsity of any allegations, secretly made or openly preferred, may be promptly made to appear.

I have the honor to be, very respectfully, your ob't serv't,
THOS. AP C. JONES,
U. S. Navy, late commanding U. S. Naval forces Pacific.

The HON. FREDERICK P. STANTON,
Chairman of the Committee on Naval Affairs.

WASHINGTON, 24th *March*, 1852.

SIR: I am credibly informed that Com. ap Catesby Jones has made a statement to the Hon. Frederick Stanton, Chairman of the

Naval Committee, in relation to the steam engine and saw-mill sent out by the government from New York, in a store ship, in the summer of 1848, directed to be erected by the Navy Department, under the directions of W. F. Merceir, who was ordered to report to the commanding naval officer at Monterey, (U. C.;) which mill was put up at Sancelita, on the property of Lieutenant James McCormick, while in command of the Edith, under his personal direction and superintendence, for which purpose he was given charge of the Edith, by aforesaid Com. Jones, as my correspondence with Commodore Jones clearly shows.

Said correspondence exhibits a violation and a wilful contradiction of the orders and instructions he received from the department, aiding thereby and abetting to said McCormick's conduct.

Between June, the date of the transfer of the Edith from the War to the Navy Department, Lieut. McCormick being in temporary command of her, was employed in erecting this mill, to the entire and total neglect of his proper duties.

The mill leased out by said Jones to one R. A. Parker. McCormick was a silent partner, in violation of his commission; and, under pretence that the machinery of the steamer needed repairs, a Mr. Seawits (machinist) was employed, under contract to repair it; that the ship was used by him, as well as the other property belonging to her, for this purpose, while said Seawits was employed from daylight till sunset upon the erection of the mill, to the total neglect of the shaft, which was all that did require attention, and which did not require a machinist. The engineer proper of the ship, F. C. Varran, had been her engineer, and was ready to do the work himself, without subjecting the government to the enormous and unnecessary expense of engaging the services of a machinist.

Mr. Varran continued attached to her, and had done all the work preparatory to shifting the shaft, by himself, and which was done in four days after commencing the work. Lieut. McCormick paid no attention or regard to the proper duties of the ship after the machinist came on board. The mill alone was the Captain's and the machinist's consideration. I was ordered by the Department to command the Edith, and to proceed by the overland route. My travelling expenses were advanced to me to go by this route. Commodore Jones had been instructed by the Hon. Secretary of the Navy to this effect, viz: that I, Richard W. Meade, was ordered to the command of the Edith, and that I would proceed at an early day to take the command by the overland route. These instructions were in the possession of Commodore Jones, yet he refused me the command, unblushingly and wilfully stating that he had received official instructions that I was to come round Cape Horn, in the Falmouth, when he was to place me in command of her, and invited me, with said orders of the Secretary, to make use of my time as best suited my convenience. The squadron at that time was short of officers, needed them to carry on the duty permitted Lieut. McCormick, to the total neglect of his duties and to the shifting of the shaft of the Edith, to pursue his private scheme of aggrandizement in speculating upon government property. The Hon. Rodman M. Price, of the state of New Jersey, late purser and

especial navy agent at San Francisco, has been pleased to inform me that it was by my information alone, that the bill for the relief of Lieut. McCormick, assignee of Parker, was recommitted back to the Committee on Naval Affairs. If this is so, I should feel no disposition to disclaim it; for I do most candidly and sacredly believe that this is the most barefaced and unblushing fraud that was ever perpetrated.

It is notorious; it was universally known in California among those brought in contact with the squadron, that the very air was tainted with these corruptions. Why, sir, a court martial which sat in this city solemnly convicted Commodore Jones of speculations upon government money, not in a bold, grand, operation, but in shaving.

Will my friend Mr. Price, or any other man who was connected with that squadron, swear that he never heard rumors of these disgraceful transactions?

The officers necessary for Commodore Jones are all on the spot: he need not send to San Francisco. Therefore, it is a matter of no importance upon whose information this action was based. I beg, therefore, sir, that you will disregard the cry, and not permit your attention to be diverted except by the evidence of those here, who know how this mill was erected, and which is the only true point of inquiry. I will not close this point without remarking that for the Hon. Mr. Price, I have ever and do now feel respect. He discredits these reports and facts: I do not object to that. What I state, and desire to state, I have seen and heard. I would respectfully state that your report came to my notice after you had left this city for Virginia. I called to see you, and deeply regretted your absence, as I wished to inform you of this whole matter. I made it my duty to see Mr. McConkle and other gentlemen, who I requested to explain to you that I was satisfied you had been deceived. I came here two months ago to show up by resolution before the Senate the wilful violation of all law, order, authority, and truth, as exercised by Commodore Jones in the Pacific, under my own observation. As I was refused by the Department an investigation of the same, and for which I resigned my commission as a lieutenant in the navy, in violation to my feelings after twenty-six years' service, I would respectfully request you to summons W. F. Mercier, late engineer in the navy, who was dismissed upon a report of Lieut. McCormick without trial. He resides No. 9, South wharves, Philadelphia; Thomas B. Nalle, purser, U. States navy, Culpepper court-house, Virginia; R. Bemen, esq., 34 Broadway, New York; Lieut. Worden, National Observatory, Washington; passed midshipman Wm. Gibson, at Mr. Crutchet's, 6th & D streets, Washington city; F. C. Varran, late engineer of the steamer Edith, is now in New York, just arrived, lives No. 313 Sixth st., New York.

I am, very respectfully, your ob't serv't,

R. W. MEADE.

HON. THOS. S. BOCOCK.

P. S. The death of my mother calls me to Philadelphia, and thence home. I reside corner of Hoyt and State streets, Brooklyn, L. I.

Respectfully,

R. W. M.

BROOKLYN, *corner Hoyt and State streets, March* 27, 1852.

DEAR SIR: I buried my lamented mother on the 25th instant, and am at present with my family. I saw Engineer William F. Mercier, whose office is No. 9 South Wharves, Philadelphia, and he is ready to give his evidence in relation to the mill at Sancelito which *he* took out by order of the department to put up. At New York I was fortunate to find Engineer F. C. Varran, just arrived in the United States, and resides at No. 313 Sixth street, N. Y. He is ready to give his evidence as to all matters, and that all the work to be done on the ship was done by him in four days, or thereabout, without the necessity of the machinist Seawitz. He was engineer nearly four years, and continued in her after her transfer to the navy and squadron of Commodore Jones.

Ransom Beman, esq., of coal history, resides at 98 East Thirtieth street—his office is 34 Broadway, first floor up stairs, back room. I beg these persons, so important as witnesses, may be telegraphed *at once*, so vital are they to a thorough investigation of all this mill business. Please read the enclosed letter to the Hon. Thomas S. Bocock and hand the same, explaining, as you are aware, my delicacy in approaching you so soon as I saw his report, having left for Virginia. I had no alternative but to see you, self-satisfied that Mr. B. has been imposed upon. All hands agree as to the character of the referee, Talbot Green, esq., named in Mr. B's. report. If the committee will telegraph me, with authority to summon these three gentlemen, I will see them at once and be on by mail forthwith. You see the importance of the immediate call by the committee of Varran, as he is liable to go to sea again, it being his daily bread, and may not return until after the session of Congress. Again: it is vital to my reputation, I having the credit of referring the report back. I pray, therefore, your zealous action in my behalf, and that I may be called with them. Please see the Hon. Lorenzo Burrows, National Hotel, with my respects, and ask him to see Mr. Bocock—they both being on the committee; also, Mr. Stanton, chairman, who referred me to the Hon. Mr. Bocock, and whom I could not call upon the day he referred me, on account of the affliction of my family, having to proceed hither. Please telegraph me through the honorable chairman of the committee, officially summoning me with them for this vital evidence.

I am, very respectfully and truly, your obedient servant,

R. W. MEADE.

Hon. ——— MCCORKLE, *of California.*

NEAR ST. MICHAEL'S, MD., *February* 28, 1853.

SIR: I have no personal knowledge of the erection of the steam mill at Sancelito, as it was in operation before I arrived there. I was appointed arbitrator on the part of the United States by Commodore Jones, much against my inclination. Mr. Green and myself gave the award after a careful examination of the books and accounts. We

considered that we could not go behind the contract of Commodore Jones and Robert A. Parker, which guaranteed that the latter should lose nothing in any event.

Very respectfully, your obedient servant,

JNO. N. HAMBLETON,
Purser U. S. Navy.

Hon. JOHN M. BOTTS.

"For the amount due to James McCormick, assignee of Robert A. Parker, under a contract for the employment of a saw-mill on the coast of California, made with Commodore Th. ap C. Jones, late commander of the Pacific squadron, twenty-five thousand seven hundred and sixty-six dollars and sixty-six cents."

The above was unanimously ordered by the naval committee of the House of Representatives to be moved as an amendment to the naval appropriation bill.

TH. S. BOCOCK.

IN THE COURT OF CLAIMS,

No. 151—TRIALS 167.

JAMES MCCORMICK and ARISTIDES WELCH, assignees of ROBERT A. PARKER, *vs.* THE UNITED STATES.

Solicitor's Brief.

The petitioner claims payment of an award made in his favor by referees upon demands against the United States arising under a contract made between Commodore Thomas ap Catesby Jones and Robert A. Parker, on the 9th April, 1849.

The facts appear to be as follows, as shown by original papers in evidence, and others printed in Miscellaneous Document No. 22, 32d Congress, 2d session:

In the year 1848 a steam saw-mill was sent by the Navy Department to Commodore Jones, who was commanding the squadron on the coast of California, to saw timber for the use of the squadron. The frame of a house to shelter it, an assortment of tools, a carpenter and an engineer, were sent out to put it in operation. (Doc. 22, pp, 86 to 89.)

Instead of setting up the saw-mill on government account, Commodore Jones, by deed dated April 7, 1849, and set forth in the petition, leased it to Bobert A. Parker, of San Francisco, on substantially the following terms:

Parker was to set it up and put it in operation by the first day of September, 1849.

He was to have the exclusive use of it for three months after the commencement of sawing.

Thereafter he was to furnish lumber on the requisition of naval

officers, at prices not to exceed the cost of procuring, transporting, and sawing, provided he should not be required to furnish lumber in any one month beyond one-third the average capacity of the mill in that period, nor for any other purpose than naval uses.

He was to deliver up the mill in good order whenever required so to do, under the contract—that is to say, 1st, on the expiration of the term of eighteen months from May 1, 1849, viz: on the 1st of November, 1850; or, 2d, whenever the government should require the mill for their own use.

If he should be required to deliver the mill before the expiration of the term, and if the mill had not then cleared all costs and charges for setting up and putting to work, and a fair business profit besides, then referees were to be appointed to ascertain what sum was necessary in addition to the receipts of the mill to cover such costs, expenses, and profit, and such sum was to be paid him by the United States.

Parker assigned this contract to James McCormick, a lieutenant in the United States navy, on the 20th of August, 1849. (Assignment on original contract.)

On the 28th of January, 1850, Commodore Jones notified Parker to deliver up the mill on the 30th of April following.

On the 26th of April, 1850, Commodore Jones having received instructions from the Navy Department dated March 12, 1850, to allow Parker to keep the mill until it should have paid expenses, communicated this order to Parker, and requested a statement of accounts, in order to know whether to allow him to keep it longer. (Letters filed.)

On the 22d of June, 1850, Commodore Jones ordered Purser Hambleton, of the navy, to require Parker to deliver up the mill on the 1st of July, 1850; he said Parker's assignees had no claim upon the United States for one cent for erecting the mill, but if they demurred to the arrangement, Mr. Hambleton should act as referee on the part of the United States. (Letter filed.)

On the 9th of July, 1850, Purser Hambleton, on the part of the United States, and Mr. T. A. Green, on the part of Parker's assignee, Lieutenant McCormick, signed an award in favor of the latter for $25,766 67.

This award was assigned by McCormick, on the 28th of August, 1851, to Aristides Welch, who brings this suit to recover the amount.

The Solicitor defends the suit on the following grounds:

I. That Commodore Jones had no authority, 1st, to lease out the mill, or, 2d, to submit to arbitration any demand against the United States.

II. That, under the terms of the contract, Parker's assignees have no claim for the amount awarded; 1st, because he did not fulfil his covenants by setting the mill in operation within the time limited; 2d, because he did not deliver up the mill when required by the government officer, but kept it in his possession for the full term of eighteen months, and long thereafter.

Commodore Jones had no authority to hire out the mill.

No officer of the navy has authority to loan or hire out public tools or machinery. No attempt is made by the claimant to show that Commodore Jones had such authority, except by a letter of Mr. Mason, who was Secretary of the Navy when the mill was sent out, and who, long after he is out of office, gives an *opinion* that Commodore Jones had authority to make such a contract, but he states it as "my opinion on the extent of power conferred on Commodore Jones by my instructions." This opinion is not evidence. The instructions are before the court, (Doc. 22, pp. 86 to 89,) or if those before the court are not all the instructions, the claimant can and should produce the rest; and the instructions must be construed by this court. They contain no such authority.

It is said that the men of the navy could not be trusted on shore to put up the mill, and that to store it in San Francisco would have cost "more in a single month for house rent than the first cost of a perfect mill." (Commodore Jones's report of January 28, 1850, Doc. 22, p. 89.) The perfect mill cost $6,388 46.

Now Parker built a house, put the mill up, and ran it certainly till July 1, 1850—fourteen months. He rendered a bill of the entire cost of the whole establishment, including additional stock for carrying on the lumber business during that time, in which were charged $8,000 for cutting and rafting logs; $1,500 for stumpage; $4,000 for fuel; $2,500 for oxen; besides the wages and subsistence of the firemen, sawyers, and laborers. All these amounted to less than $46,000, or an average of $3,300 a month. (Doc. 22, pp. 103, 108.) Commodore Jones said this bill was "inordinate," and would be "reduced more than 50 per cent. (Doc. 22, p. 100.) To say that it would have cost $6,000 per month only to store the mill, is to say that the part is many times greater than the whole.

It was not for want of land that he did not build a house to shelter the engine. There was plenty of public ground at San Francisco, and, moreover, Commodore Jones had an idea that all land within fifty varas of high-water mark in California belonged to the United States, (Doc. 22, p. 101,) and under this impression, it appears, he suffered the mill to be erected in a place which turned out to belong to Parker. Nor was the want of money the cause of his not building a house to shelter the machine. Secretary Graham (letter of January 7, 1851, Doc. 22, p. 121) says Commodore Jones "had funds, or the means of raising them, for all objects within his legitimate sphere," and Commodore Jones, in a report to Secretary Graham, says that besides a sum of $23,000, (which he had authority to apply to the use of the squadron if needed,) he had ample funds on hand for current use. This was the state of funds November 1, 1848. (Report to Secretary Graham, September 24, 1850, Doc. 22, p. 125-7.)

The alternative could not then have been either to let the mill perish or to make this contract.

At best Commodore Jones could only have adopted the arrangement as a means of saving money to the United States.

But he says he had "another and a higher motive than the mere

saving of dollars and cents ;" that was to place the mill in hands where it would supply materials for houses for emigrants. (His Report to the Secretary, June 29, 1850, Doc. 21, p. 93.) The motive was laudable, but we find in the arrangement no provision for their benefit. Parker was permitted to take unlimited advantages of their necessities.

Commodore Jones had no authority to submit any demand that might arise under the contract to arbitration.

The statute law of the United States provides that written contracts duly entered into by officers of the United States are to be transmitted to the Comptroller of the Treasury, and all demands are to be presented at the treasury. (Acts of July 16, 1798, sec. 6, 1 Stat., 610, and March 3, 1817, sec 2, 3 Stat , 366.)

Parker did not perform the conditions upon which the liability of the United States was to depend.

He did not set up the mill within the time contracted for. The United States were to be liable only in case the profits of the mill failed to cover its own expenses before the United States resumed possession. The amount of profits of course depended in a great measure on the time during which the mill was at work, and therefore the time of getting to work, which was expressly covenanted for, was of the essence of the contract. No evidence is offered to prove the time of putting the mill into operation. Commodore Jones says the contractor lost by his own default "near three working months over and above the four months allowed (by contract) for erecting the mill. He adds that when it was put to work it was mismanaged. (Doc. 22, p. 99.) McCormick admitted that it was not ready for work on the 1st of September. (His letter of February 6, 1850, Doc. 22, p. 114.) This was after additional time had been given by changing the date of the lease from January 9, to April 9. (Doc. 22, p. 164.)

Parker did not deliver up the mill when required by the United States.

The claimant offers no evidence to show that it was delivered up when required, or was ever delivered up. So far as shown or known, it is still held by the claimant.

The claimant was required to deliver it up on the 30th of April, 1850. (Original notice, dated January 28, 1850.) That he did not comply, appears from the fact that Purser Hambleton was ordered by Commodore Jones to demand the delivery of the mill on the 1st of July, 1850. (Commodore Jones to Purser Hambleton, June 22, 1850, Doc 22, p. 99.) Hambleton reported, June 26, 1850, that he had made the demand, (Doc. 22, p. 102,) and again, July 14, 1850, that Parker would not deliver it. (Doc. 22, p. 102–3.) On the 7th of January, 1851, the Navy Department instructed an officer again to demand the mill. (Secretary Graham to Commodore McCauley, Doc. 22, p. 117.) The demand was not complied with, (Report of Lieut. Kennedy, March 31, 1851, Doc. 22, p. 119 ;) and on the 31st of July,

1851, the district attorney at San Francisco was preparing to bring suit. (See his Report to the Secretary of the Navy, Doc. 22, p. 118.) This is the very last intelligence we have of the saw-mill. The lease had expired by its own limitation on the 1st of November, 1850.

The whole consideration for the agreement to pay the costs, expenses, and profits, and to ascertain these by arbitration, was to secure the prompt possession of the mill when required by the government. Parker bound himself to deliver the mill whenever under the contract he might be called upon to do so. The contract provided that the government might resume possession whenever required for their own use. The appointment of the referee on the part of the United States was made in the confidence that Parker would deliver up the mill. When he refused to do so, the contingency contemplated in the contract by Commodore Jones in making the appointment, did not arise, and the conditional power of the referees never took effect.

It is intimated in Commodore Jones's letter to Purser Hambleton of June 22, 1850, (Doc. 22, p. 99,) that Parker had set up a claim for rent of the land on which the mill stood, and this claim is understood to be the pretence for retaining the mill. That one who hires a machine and works it on his own land, and is in possession of that land, should charge the owner of the machine rent for land of which the latter never had the possession or use, is so absurd as to show on its face that it is a mere pretence for keeping the mill.

Mr. Bocock, of the Naval Committee of the House, made a report in favor of this claim, which has been greatly relied on by the claimant. But that this report was made in ignorance of many of the facts, appears from two circumstances. 1st. Many important papers are not found among those which were before the committee, and which are now before this court. 2d. The report says that it was not pretended by any body that Parker first violated the contract; whereas Commodore Jones, in a paper, not among those received from the House, but printed by Congress, and above referred to, charges most expressly and specifically that Parker did first violate the contract. The same printed document contains many other reports of essential facts.

There are some other circumstances which might deserve attention, such as that the contract was assigned by Parker, though not in law assignable, and that the assignee, Mr. McCormick, was a lieutenant in the navy, and should not, therefore, have become a contractor for furnishing supplies to the navy. But I prefer to rest the case solely upon the point, that the claimant has rendered no service whatever to the United States beyond what he has received the stipulated compensation for.

JNO. D. McPHERSON, *Deputy Solicitor.*

IN THE COURT OF CLAIMS.

WELCH, assignee of MCCORMICK, who was assignee of PARKER, *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

This is a claim for $25,766 67, founded on an award dated July 9, 1850. Interest on said sum from the date of the award is also claimed. The material facts are as follows:

On the 28th of July, 1848, Mr. Skinner, of the Bureau of Construction, informed Commodore Jones, commanding the Pacific squadron, that he had previously shipped to the latter's station a steam engine and saw-mill, with an engineer to erect it. The engineer sent was W. V. Mercier. It does not appear that any other instructions were given to the commodore respecting the mill.

On the 7th of April, 1849, the commodore entered into a contract with Robert A. Parker, of San Francisco, respecting said mill. That contract provided that Parker should have the use of the mill for eighteen months from the first of May then next; that he should set up the mill and put it in operation within four months from said first of May; that for three months from the commenceme ·t of sawing no rent should be charged; that he would furnish certain sawed lumber for the use of the navy at a certain price. The contract also contains the following provision:

"If, contrary to all reasonable expectation, the government should require the steam engine, mills, &c., for their own use before the expiration of this contract, in that case, provided the mills have not cleared all costs and charges, and charges for setting up and putting to work, and a fair business profit thereon, referees shall be appointed by the parties, respectively, to ascertain and name the sum, if any, necessary to reimburse the party aforesaid, which, when duly ascertained, will be paid by the United States to the aforesaid Robert A. Parker or his assigns."

That contract appears to have been assigned on the 20th of August, 1849, by Parker to James McCormick.

On the first of December, 1849, Mr. Preston, Secretary of the Navy, wrote to Commodore Jones, inquiring of him as to what had been done with the mill, and directing him to place it in charge of the navy agent or purser at San Francisco as government property.

On the 28th of January, 1850, the commodore wrote to Secretary Preston, enclosing a copy of said agreement with Parker. This letter proceeds as follows: "When I first reached San Francisco in November, 1848, I found parts of the steam engine, machinery, and saw-mill had arrived in a military transport, and in the absence of any vessel or officer of the navy, the squadron not having arrived from Lower California, the parts above alluded to were carelessly thrown on shore, partly in the water, at San Francisco, and in a very perishing state; nor was it in my power to place them in a much better condition, for all that I could do was to collect the parts and stow them in an open yard, as it was impossible to obtain dry storage in San Francisco at that time, nor since, that would not, exclusive of the ex-

pense of moving, have amounted to more in a single month for house rent than the first cost of a perfect mill.

"As to erecting this mill by any means at my command, that was entirely out of the question; for our men, about those times, could not be entrusted on shore to supply themselves with provisions and water. The only alternative left me, to avoid utter ruin and destruction of the mill and machinery, was the expedient adopted, whereby the mill has been preserved from destruction, and is now available for any work that may be required for the navy, or it could be sold to advantage should the department prefer it." * * * * This letter also informs the Secretary that the mill had been set up by Parker under a close house on the beach of Sancelito, the watering place of the port of San Francisco, and that he should await the Secretary's further orders before he annulled the contract, but should notify Parker to be prepared to surrender the premises on the 30th of April, by which time the Secretary's orders could be received.

On the same day (28th of January, 1850) that the commodore wrote the last-named letter, he, in pursuance of said direction, required Parker to deliver the mill on the 30th of April then next, to the purser or navy agent for the port of San Francisco, or such other person as should be authorized to receive it.

On the 12th of March, 1850, the Secretary, Mr. Preston, wrote to Commodore Jones as follows:

"SIR: Your despatch, No. 91, of the 28th January, with its enclosure, has been received. You will be pleased to cause an accurate account to be made (and report to the department) of the cost and charges of setting up and putting in operation the steam saw-mill at San Francisco, for the purpose of ascertaining whether the mill has cleared itself.

"If, under the terms of the contract entered into with Parker, the mill has already relieved itself, then you will resume the possession of the said saw-mill, and, if your means will enable you to do so, you will use the same for the preparation of such timber, &c., as may be necessary for the purposes of the squadron under your command.

"If, however, upon a careful examination, it is ascertained that Mr. Parker would be still entitled to remuneration thereunto, then you are ordered to permit the mill to remain in his possession until he is reimbursed for the cost and charges of its erection under the contract, at which time you will assume the control and retain the saw-mill as hereinbefore directed.

"The department regrets that you deemed it proper to enter into the contract with Parker, of the existence of which contract it had not been apprised until the receipt of your despatch No. 91.

"The object for which the mill was forwarded to California was the facilities which might be rendered to the squadron in the Pacific, and not with a view of entering into such arrangements with private individuals as the contract evinces. You will also be pleased to furnish the department with an account of the sawed lumber furnished for the use of the government under the contract with Parker."

On the 26th of April, 1850, the commodore wrote to Parker, en-

closing to him an extract of the Secretary's letter received by the then last mail, relating to the saw-mill.

On the 22d of June, 1850, the commodore wrote to Hambleton, enclosing extracts from said two orders of the Secretary relative to said saw-mill, and stating that the assignees of Parker had no claim for erecting the mill, nor for the house covering it. This letter directs Hambleton to require Parker's agent or assignee to deliver over to him on the first of July the mill and its appurtenances, and says that if Parker's assignee should demur to the arrangement, he (Hambleton) was appointed a referee on the part of the navy to meet any referee of the other party, to name the sum, if any, necessary to reimburse the said party.

On the 29th of June, 1850, the commodore wrote to the Secretary, saying that Parker considered the Secretary's first order (December 1, 1849,) as equivalent to a demand for the mill, and consequently as abrogating the contract under which the mill was put up; that Parker claimed (though in his, Jones's opinion, without the least show of justice) heavy remuneration for erecting the mill, alleging that the mill had not cleared its expenses when the notice to quit was given, and (says the letter) that, as in the event of said demand, the contract required the appointment of arbitrators to ascertain the sum, if any, necessary to reimburse said party, he (Jones) had named Purser Hambleton, on the part of the United States to meet any person on the other part to examine the claim and report thereon.

On the 9th of July, 1850, T. H. Green, a referee appointed by McCormick, who was Parker's assignee, and the aforesaid referee (Hambleton) made their award at Sancelito, in favor of McCormick, for $25,766 64.

On the 14th of July, 1850, Hambleton wrote the following letter to Com. McCauley, commander of the Pacific squadron, (Com. Jones's successor:)

"SIR: I forward herewith the papers relating to the saw-mill belonging to the United States at Sancelito. I demanded possession of it on the 1st July, by order of Commodore Jones, and was appointed by him a referee on the part of the Navy Department to ascertain the amount due Robert A. Parker's assignee. The award is enclosed. We could look at nothing behind the contract, or determine what might have been done by Mr. Parker and his assignee, believing that self-interest would have been a sufficient incentive for them to have used their best exertion in conducting the business. Vouchers were not exhibited for all the charges, and we had to rely on the books for many of them. Mr. Parker's assignee claims the building containing the saw-mill, and keeps possession of the key."

On the 7th of January, 1851, Mr. Graham, Secretary of the Navy, (Mr. Preston's successor,) wrote to Commodore McCauley as follows:

"SIR: In the letter of Purser John N. Hambleton, addressed to you, under date of 14th of July last, relative to the saw-mill at Sancelito, belonging to the United States, is the following remark: 'Mr. Parker's assignee claims the building containing the saw-mill and keeps possession of the key.' You will immediately, on receipt of this letter, claim full and unrestrained possession of the said saw-mill in behalf of

the United States, and proceed, after due notice, to sell the same at public auction, the proceeds of which will be returned to the Treasury of the United States. Should any opposition be offered to your taking possession, you will be pleased to place the case in the hands of the district attorney of the United States, who will take the necessary steps to recover the property."

On the same day that the last mentioned letter was written, (January 7, 1851,) Secretary Graham wrote to Mr. Botts, as follows:

"Sir: Your letter of the 4th inst., in support of the claim of James McCormick, late a lieutenant in the navy, as assignee of Robert A. Parker, has been received.

"The saw-mill which gives rise to the claim cost the government the sum of $6,300. It was paid for out of the appropriation of Mexican hostilities, and carried to California for naval uses merely.

"The commander of the squadron was not authorized to make any agreement by which the government was to incur a debt in setting it up for use, or in using it. He had funds, or the means of raising them, for all purposes within its legitimate sphere, but no power to involve the government in a partnership operation of profit and loss in cutting and vending lumber. My predecessor in this department, on learning that such a contract had been made, disavowed it, and directed that the saw-mill, which was public property, should be demanded and taken possession of by Commodore McCauley, who succeeded to the command of the Pacific squadron. After this refusal by the department to admit the authority to enter into the contract, a reference was made to arbitration, likewise without authority, and the award on which you insist was the result. But Mr. McCormick, who was a lieutenant in the Pacific squadron when the contract and award were made, having taken an assignment from the contractor, (Parker,) retains the key to the mill-house, and is understood to hold possession as a means of enforcing the payment of the award. Now, I cannot consent that a naval officer shall, without the approbation of the department, either bind the government to a partnership in business or to the performance of an award for the settlement of such business. Such an admission would not only be repugnant to the regulations of the service, but would impose burdens on the treasury to which no limit could be set.

"In this very case, an article of property costing $6,300 is made, by this contract and award, to occasion a demand on the government for four times that amount. But independently of the objection to the demand itself, the department has no fund under its control for the payment of claims of this nature, and if it were recognized, it would still be necessary to ask an appropriation by Congress to pay it.

"I am, &c.,

"WILL. A. GRAHAM.

"Hon. J. M. Botts,

"*Richmond, Va.*"

Next in order is a letter from Mr. Mason, a former Secretary of the Navy, in answer to one dated House of Representatives, February 11, 1851, from a member of the naval committee. Mr. Mason's letter is as follows:

"RICHMOND, *February* 13, 1851.

"MY DEAR SIR: I have received your favor of the 11th instant, and do not hesitate to reply to your inquiry. While I was in the Navy Department, it became a duty of no small importance in my judgment to receive a supply of lumber on the west coast or coast of California for naval purposes. In the prosecution of the war with Mexico a very large naval force had been collected on that station, and it was regarded as a wise measure to send a steam saw-mill to prepare lumber for the use of the squadron. Commodore Jones was ordered as the commander-in-chief of the naval forces on that station. The steam machinery sent out for preparation of lumber for repair was placed, of course, under his general direction. If, under the circumstances which he found to exist, he deemed it better to have the engine worked by contract than to employ the labor and superintendence, with the necessary buildings, on account of the government, I do not doubt that he had the authority, subject to the controlling power of the Navy Department. But if, in his discretion, the Secretary of the Navy interposed and put an end to the contract on the part of the government, the other party to the contract is entitled to indemnification according to the terms and stipulations of the contract inself.

"I left the Navy Department in March, 1849, and I perceive that the contract is dated in April of that year. I give you my opinion on the extent of power conferred on Commodore Jones by my instructions without an accurate knowledge of the subsequent orders of the Navy Department, and without any wish to be understood as passing judgment on those official acts.

"I am, &c.,

"J. Y. MASON.

"Hon. THOMAS S. BOCOCK,
"*H. of Representatives.*"

On the 31st of March, 1851, Mr. Kennedy, commanding, &c., wrote from San Francisco to Mr. Secretary Graham, as follows:

"SIR: Mr. Parker, assignee, having refused to yield possession of the saw-mill, the property of the United States at Sancelito, I have in obedience to your instructions to Commodore McCauley, under date of January 7, 1851, put the case into the hands of the United States district attorney."

On the 31st of July, 1851, the said district attorney wrote from San Francisco to Secretary Graham for copies of papers relating to the saw-mill. It appears that afterwards, to-wit, on the 28th of August, 1851, James McCormick, who was assignee of Parker, assigned to Aristides Welch, the claimant, the aforesaid agreement of the 7th of April, 1849, and also all his (McCormick's) interest in the said award.

The petition was originally filed by said McCormick as assignee of said Parker. That petition prayed the court to cause judgment to be entered for the claimant for the amount of said award, with interest from its date. The present claimant (Welch) afterwards filed an

amended petition, praying judgment in his favor for the amount of said award with interest as aforesaid.

The award, as before said, is the foundation of this suit; and it is the only evidence offered to prove the amount claimed or any part of it. Commodore Jones was acting as an agent of the government with respect to this mill. Whether his authority was limited to having the mill built and carried on for the sole use of the government, or whether his authority in regard to the mill was that of a general agent, is not deemed material. We consider the law to be, that such an agent of the government as the commodore was, cannot, without being specially authorized to do so, bind the government by a submission of matters in dispute to arbitration. It follows, that the part of the contract of the 7th of April, 1849, with Parker, which provides for a submission to arbitration, is void for the want of authority in the commodore to make it, and, of course, the award must be likewise void.

In this view of the case, some of the preceding matters are not applicable to this claim. That is the case, for instance, with Mr. Mason's letter, which has no relation to the award. Another objection to that letter as evidence is, that it was written after the writer had left the office, and it is not under oath. Besides, the greater part of it is objectionable, as being a mere expression of opinion as to the authority of the commodore to make the contract with Parker, and as to the legal construction of that contract.

It is the opinion of the court that the claimant is not entitled to recover.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES { REP. C. C. No. 200.

NATHANIEL RIDDICK, ADMINISTRATOR OF COL. WILLIS RIDDICK.

FEBRUARY 11, 1860.—Reported from the Committee on Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

NATHANIEL RIDDICK, ADMINISTRATOR OF COL. WILLIS RIDDICK, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Copy of Willis Riddick's will.
3. Depositions, numbered from 1 to 6, in support of the claim, with a plan showing location of Colonel Riddick's house, transmitted to House of Representatives.
4. Claimant's briefs.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Petition of Nathaniel Riddick, administrator de bonis non, with the will annexed, of Colonel Willis Riddick, deceased.

To the honorable the judges of the Court of Claims:

The petition of Nathaniel Riddick, administrator *de bonis non*, with the will annexed, of Colonel Willis Riddick, deceased, of Nansemond county, State of Virginia, respectfully represents:

That in the year 1779, and previous thereto, the said Colonel Willis Riddick resided in Nansemond county, Virginia, about three miles from the town of Suffolk, and was the owner of a very valuable plantation, known as the "Retreat Farm," on which were large and valuable buildings, (dwelling, outhouses, &c.,) which were nearly new, all of which buildings were burned and destroyed by the British forces in 1779, and for which your petitioner claims that the government of the United States is bound to pay according to the principles of law governing implied contracts, and on the grounds of equity and right, and in accordance with the action of Congress on this and other similar cases.

That the circumstances of the case are as follows: That early in the year 1779 a detachment of British troops marched from Norfolk, near which place the British army was stationed, towards Suffolk, Nansemond county, Virginia, where a large quantity of public stores and property were stored, consisting of about one thousand barrels of pork and a considerable quantity of beef, with the intention, doubtless, of capturing or destroying the same. That the said Colonel Willis Riddick, a patriotic citizen and colonel of the militia, seeing the jeopardy of the said public stores, and desiring to save them for the American forces, and from destruction by the British, and believing they would be safer at his residence than in Suffolk, consented that his cellar and houses should become the places of deposit for the same, and they were accordingly removed by proper authority and placed in his cellar and his houses. That the British commander, with his forces, marched to Suffolk and burned the town, and having ascertained that the said public stores were deposited on the premises of Colonel Willis Riddick aforesaid, marched thither and burned and destroyed all his houses, and such other property as they could find, and the said public stores. That the loss sustained by Colonel Riddick, in consequence of such destruction of his houses and of his corn, crops, furniture, &c , was very great, equal in value to a sum of $8,000 to $10,000. That he was nearly impoverished by this destruction of his property, and his own health greatly impaired by distress of mind at the loss of his estate, and soon died, to wit, in 1781.

Your petitioner charges that in *consequence of the use and occupation of the premises aforesaid of Colonel Willis Riddick by and for the benefit of the general government he has sustained the loss aforesaid; that it was in consequence of his premises being thus used that the same became an object of attack and destruction by the British; that but for such use and occupation it is highly probable no such loss would have been sus-*

tained by him; that as his property was destroyed because of its use and occupation by the general government he should receive pay for the same, and the general government is liable thereto.

And your petitioner further states that Colonel Willis Riddick, at the time of his death, expected the State of Virginia to pay him for his loss, as appears by a clause in his will, filed in this cause, wherein he says: "Whereas I have reason to judge that the general assembly of this State will think it just that a proper allowance should be made me for the damage I have sustained in the burning and destroying my houses by the British forces, in such case I give, &c." And that no payment by the State of Virginia or by Congress has ever been made for said loss.—(See Exhibit No. 10.)

Your petitioner further represents that a claim for damages as aforesaid was presented to Congress at the 23d Congress, and the same has been repeatedly reported on favorably, and once passed the House of Representatives, and never reported against. The following summary will show in detail the action of Congress on said claim:

Summary of the action of Congress on the claim.

Name of claimant.	Nature of claim.	Congress.	Session.	How brought before the House.	Page of Journal.	To what committee referred.	Number or date of report.	Nature of report.	Number of bill.	How disposed of by House of Representatives.
Heirs of Col. Willis Riddick...	For destruction of property in the revolutionary war.	23	1	Petition.....	127	Rev'y Claims..	412	Favorable.	430	Referred to Committee of Whole House.
		24	1	...do.....	69	..... do.....	273	...do.....	280	
		24	2	Bill of last session..	90	Whole House..	.....	.....	280	
		25	2	Petition.....	40	Rev'y Claims..	119	Favorable..	137	Referred to Committee of Whole House.
		26	1	....do	165	.....do.....	.....	.....	.....	
		28	1	....do.....	988	.....do.....	.....	.....	.....	
		28	2	....do.....	57	.....do.....	.....	.....	.....	
		30	1	....do.....	513	.....do.....	Aug. 8, 1848	Favorable.	638	Referred to Committee of Whole House.
		31	1	....do	194	.....do.....	41	....do.....	70	Referred to Committee of Whole House.
		31	2	Bill of last session..	75	Whole House..	Dec. 20, 1850	With an amend't.	70	Passed.

That the said bill, as it passed the House of Representatives, went to the Senate, and on the 23d of December, 1850, was referred to the Committee on Revolutionary Claims, and no report was made. That the said claim was again presented at the last session of Congress, and duly referred and reported favorable, and then referred by the act of Congress establishing this honorable court to the said court.

Your petitioner further states that the report made by the committee of the House of Representatives on the 16th of February, 1854, so fully sets forth some of the reasons why this claim should be paid, that he annexes a copy hereto, designated as "Exhibit No. 1," and also a copy of the bill as reported by said committee, designated as "Exhibit No. 2."

Your petitioner cannot specify any act of Congress of a general nature under which he could claim payment from any one of the departments, but he can refer to many laws of a special nature paying for destruction of private property when the same was destroyed by the enemy, while the same was in the use of the general government, to wit: the act of 1816, (confined to payment for horses, &c.)

The act alluded to by the committee in their report for the relief of the widow and heirs of William Dewees, (6 vol. U. S. Statutes at Large, by Brown & Little, p. 207.) A copy of the report in this last-named case is annexed, "Exhibit No. 3."

An act for the relief of the legal representatives of Jean Baptiste Conture.—(Ib., p. 410.)

An act for the relief of William T. Nimmo, (Ib., p. 300,) and various other acts of a similar nature, recognizing the right of parties to receive of the general government, and the responsibility of the government to pay for destruction and loss of private property when destroyed by the *enemy* or by the *United States forces*, on account of being in the use or employment of the general government.—(See pages of the above-named volume, 40, 155, 301, 403, 165, 211, 230, 257, 261, 290, 299, 316, 325, 412, and *passim*.)

Your petitioner annexes the affidavits filed with the petition before Congress, proving the facts in the case, marked Exhibits Nos. 4, 5, 6, 7, 8, 9. He does this because the parties who gave them are now dead, and consequently no other affidavit or deposition can now be had.

For proof that the British forces did march to Suffolk and there destroy much property, and also public stores in this vicinity, your petitioner refers, in addition to the said affidavits, to Marshall's Life of Washington, vol. 4, p. 41; to Howe's History of Virginia, its History and Antiquities, pp. 117 and 387; to Henry Lee's Memoirs, p. 54, where he says: "General Matthews detached troops to Norfolk, Gosport, and circumjacent *depots of naval and military stores, &c.*"

To 2d vol. of Lee's Memoirs, p. 4, where it is stated that "General Matthews in Lower Virginia deprived the State of the contents of her arsenals."

Your petitioner states that no one is the owner of the said claim, in whole or in part, except his testator's estate. Your petitioner, therefore, claims the payment for the losses, &c., as above—

The sum of eight thousand dollars.....	$8,000 00
And interest on same seventy years	33,600 00
	41,600 00

The interest is believed by your petitioner to be as justly due as the principal, which he claims not only because of the liability of the government, but because of right and equity.

Your petitioner respectfully prays that this honorable court will grant to his testator's estate the relief sought for, and your petitioner will ever pray, &c.

NATHANIEL RIDDICK,
Administrator de bonis of Colonel Willis Riddick, deceased.

JOHN R. KILBY, *of Suffolk, Virginia, of counsel.*

The following are the exhibits referred to in the foregoing petition:

Exhibit No. 1.

HEIRS OF COLONEL WILLIS RIDDICK.

[To accompany bill H. R. No. 274.]

FEBRUARY 16, 1854.

Mr. ROGERS, from the Committee on Revolutionary Claims, made the following report.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Colonel Willis Riddick, report:

That they have examined the evidence accompanying said petition, and concur in a report made by the said committee 7th February, 1850, which they annex and make a part of this report, and, in conformity therewith, submit a bill.

FEBRUARY 7, 1850.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Colonel Willis Riddick, respectfully report:

That favorable reports have been several times made in this case, one of which, made on the 17th April, 1834, is hereto annexed and made part of this report. The committee, concurring in the opinions and statements contained therein, report a bill for the relief of the petitioners.

APRIL 17, 1834.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs and devisees of Colonel Willis Riddick, deceased, report:

The petitioners state that in the spring of 1779 a detachment of British troops marched from Norfolk, in the State of Virginia, towards Suffolk, in Nansemond county, where a quantity of public property, consisting of about one thousand barrels of pork and a considerable quantity of beef was stored, with the intention, as was supposed, of taking possession of or destroying that property. Colonel W. Riddick was then colonel commandant of the militia of Nansemond county, and, to secure this property, consented that it should be removed from Suffolk to his dwelling-house and premises. The enemy having discovered the removal of the property, proceeded to the residence of Colonel Riddick and set fire to his dwelling, barn, and outhouses, in which the said public property was stored, and destroyed not only the public property and the buildings, but his furniture, corn, bacon, &c. The petitioners ask compensation for the loss thus sustained. There is no direct evidence to show why this public property was deposited in the house and outhouses of Colonel Riddick; but the fact of its being so deposited and the destruction by the enemy of the dwelling-house, barn, and other outhouses of Colonel Riddick, together with his furniture and other personal property, is fully established by the testimony of Zaccheus Lassiter, Henry Skinner, Christian Williamson, William Faulke, William Milteer, and Henry Harrison. These witnesses concur in the opinion that the destruction of Colonel Riddick's property was in consequence of the public stores being deposited in his dwelling-house and other buildings; and they assign a satisfactory reason for this opinion, that no other private property was destroyed by the enemy in this incursion. They estimate the loss of Colonel Riddick at from eight to ten thousand dollars; his dwelling-house is represented to have been one of the best in the county. The committee are satisfied that the dwelling-house and other buildings of Colonel Riddick were destroyed by the enemy in consequence of having been made the depository of the public stores. The auditor of the State of Virginia has certified that, on an examination of the books and papers in his office, he can find no entry or other evidence that compensation has been made to Colonel W. Riddick for this destruction of his property by the enemy, or that any claim has been presented for compensation. That Colonel Riddick believed he had a just claim to compensation for the loss he had sustained is apparent from the following clause in his will, dated April 10, 1781, and proved on the 8th of April, 1782: "Whereas I have reason to judge that the general assembly of this State will think it just that a proper allowance should be made me for the damage I have sustained in the burning and destroying of my houses by the British forces, in such case I give whatever the said allowance may be, if any, unto my son Willis and his heirs forever." The committee are aware of the objections to claims of this description, arising from the great

lapse of time, and from the impolicy of establishing a precedent which may bring forward many similar claims still outstanding and unsettled. The question of policy has been settled by Congress in the case of the widow and heirs of William Dewees. In 1817 compensation was made to them for buildings and other property destroyed by the enemy at Valley Forge in 1777. That case, according to the report of the committee, differs from the present one in these particulars: the claim was exhibited to the board of treasury within the period limited by the acts of Congress, and the buildings of Mr. Dewees were occupied by the public as a deposit for military stores, contrary to the wishes and remonstrances of the owner. In this case no such early application was made, owing probably to the death of Colonel Riddick. But the statute of limitations is not interposed as a bar to other revolutionary claims, and the committee know no reason why claims of this description should be distinguished from all others. That this public property was stored in Colonel Riddick's house and other buildings with his assent, as is stated in the petition, does not, in the opinion of the committee, affect the claim to compensation for the loss sustained in consequence of such occupation. From the description of that part of the country, it appears that Colonel Riddick's house was not near any public road, nor visible from any part of a private road which passed through that neighborhood; it was, therefore, naturally selected as a place of greater security for the public property than the town of Suffolk. If, as the petition states, Colonel Riddick had the command in that district, it was his duty to take all the measures in his power to secure the public property; but if the occupation of his buildings cannot be considered as an official act, his willingness to encounter the hazard to promote the public interest was an act of patriotism which ought not to operate to his prejudice. From this view of the subject, the committee consider that a just compensation for the loss sustained should be made to the representatives of Colonel Riddick. In fixing the amount of that compensation, they have taken the lowest estimate of the witnesses, without interest, which, in their opinion, should not be allowed upon any unsettled and unliquidated claims. And they report a bill accordingly.

Exhibit No. 2.

IN THE HOUSE OF REPRESENTATIVES, *February* 16, 1854.

Read twice, and committed to a Committee of the Whole House tomorrow.

Mr. ROGERS, from the Committee on Revolutionary Claims, reported the following bill:

A BILL for the relief of the legal representatives of Colonel Willis Riddick, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid to the legal representatives of Colonel Willis Riddick, deceased, out of

any money in the treasury not otherwise appropriated, the sum of eight thousand dollars, in full satisfaction of all claims against the United States for the destruction of the house, outhouses, and other property of the said Colonel Willis Riddick, by the enemy during the revolutionary war, in consequence of being made the depository of the public stores.

Exhibit No. 3.

Report of the Committee on Pensions and Revolutionary Claims on the petition of Sarah Dewees and others, for payment of property destroyed by the enemy in the revolutionary war, made 17th of January, 1817.

The Committee on Pensions and Revolutionary Claims, to whom was referred the petition of Sarah Dewees, relict of the late Colonel Dewees, report—

That the petitioner asks Congress to make her remuneration for the destruction of her late husband's property, consisting of houses, &c., at the Valley Forge, which was committed by the enemy during the revolutionary war, &c., in consequence of its being occupied by the Americans as a military deposit.

It appears that William Dewees, in his lifetime, petitioned Congress for redress for his loss, and on the 11th of February, 1794, a report was made in the following words:

That the facts alleged in said petition are satisfactorily established; whereby it appears that in the year 1777, contrary to the wishes and remonstrances of the petitioner, the chief part of his buildings were occupied by the public as a deposit for military stores, where they continued until, on the approach of the enemy, a part of the military stores was removed.

That on the arrival of the enemy at the Valley Forge the remainder of the stores, together with the buildings and other property belonging to the petitioner, were either destroyed by fire or carried away, an estimate of which is subjoined to this petition, and appears to have been of the value of £3,404 3*s.* 4*d.*

The destruction of his property is to be ascribed wholly to the circumstance of the military stores being there deposited, and none of the buildings in the vicinity suffered in like manner.

That the claim of the petitioner is not barred by any act of limitation, having been exhibited to the board of the treasury within the period limited by these acts.

From a review of all the facts, it appears to your committee that it would be consistent with the justice and liberality of the government to authorize the allowance of a reasonable compensation in this and all other cases similarly circumstanced; that as a provision of this kind would involve a political consideration heretofore undecided upon, and the nature of which cannot always be discriminative, so as essentially to avoid all difficulty on the score of precedent, they are unwilling to decide on a principle the object and extent of which cannot well be foreseen, and therefore beg leave to bring the question before Congress by submitting the following resolution:

"*Resolved*, That a committee be appointed to bring in a bill for the relief of William Dewees."

This report and resolution were committed to a Committee of the Whole House on the 15th of December, 1794; the committee reported no resolution, which report was rejected.

The petitioner states that she petitioned Congress in 1811, but that relief was not granted; she now renews the application under the auspices of the provisions made at the last session of Congress, authorizing the payment of property lost, captured, or destroyed during the late war, and urges that her claim has equal justice with those provided for under that law. She states that all the evidence that was submitted to Congress heretofore has been destroyed by the burning of the public buildings at this place in 1814; but she submits copies of that evidence, and also some original evidence lately taken. The genuineness of these copies seems to be sufficiently established by the statement of a person who had seen and examined them.

The committee feel no doubt about the facts in this case, and that Colonel Dewees was materially injured by the act of the government in making his property the deposit of military stores It also appears that the destruction was not a wanton and unauthorized one, but one which, according to the usages of war, was legitimate and proper. It would therefore appear that indemnity ought to be afforded; but the committee feel the importance of the decision which their duty requires them to make, and fearing lest the consequences may be more extensive than this case, abstractedly considered, would indicate, inasmuch as there may be supposed to be great variety of claims of this kind still outstanding and unsettled, the payment of which might affect too materially the national treasury, and not knowing how far the Congress may be disposed to consider claims of this kind as obligatory on the government, they wish the policy and principle of the measure to be decided upon by the House. For the purpose of ascertaining the opinion of the House relative thereto, they submit the following resolution:

Resolved, That the Committee on Pensions and Revolutionary Claims be instructed to bring in a bill for the relief of the heirs of William Dewees.

Exhibit No. 4.

Nansemond County, Virginia:

I, Zacheus Lassiter, being now seventy-six years of age, do certify that I well recollect that sometime during the year 1779 a detachment of the British army, then quartered at Norfolk, came up to this county and burnt the dwelling-house, barn, and other outhouses belonging to Colonel Willis Riddick, of this county; that I saw the houses whilst they were in flames; and at the time this property was burnt there was a large quantity of public pork, and I think about four hundred barrels of beef, also public property, deposited in these houses thus destroyed by the enemy; and that it was the universal opinion of the county at the time that these houses were burnt by the British army in consequence of the public stores being deposited there,

as the enemy destroyed no other property except this; and I further certify that Colonel Willis Riddick's dwelling-house there destroyed by the British army was at that time one of the best in this county; and that the loss he sustained was not less than eight or ten thousand dollars.

his
ZACHEUS × LASSITER.
mark.

Sworn to before me, as a justice of the peace in and for the county of Nansemond, Va., this 7th day of November, 1833.

WILLIAM SUMNER. [L. S.]

Exhibit No. 5.

Affidavit of Henry Skinner, of Nansemond county, Va.

The affiant, being duly sworn upon the Holy Evangelist of Almighty God, deposeth and saith: That he is now nearly seventy-four years of age, (born January 16, 1760,) and that he was a soldier of the Revolution; that he distinctly recollects during the revolutionary war, he thinks in the year 1779, a detachment of the British forces, then quartered at Norfolk, came up to this county and burnt the dwelling and several other outhouses belonging to Colonel Willis Riddick; that there was at that time a large quantity of public pork, he thinks more than a thousand barrels, stored in the cellar of Colonel Riddick's dwelling and in other of his outhouses, and, in the opinion of this affiant, were evidently burnt in consequence of their having thus been made the depository of the public pork; that this was not only the opinion of the affiant, but of the whole neighborhood, and in truth of the whole county—for this detachment of the enemy passed every other house on the road, and visited several others in the same neighborhood, but destroyed no other houses except Colonel Willis Riddick's, as before stated, in which the public pork had been deposited. The affiant thinks there was no other house left on Colonel Riddick's plantation, after the flames had subsided, except the kitchen; that he was sent for to go over and take care of a small remnant of his property which had been saved during the conflagration. The affiant further states that Colonel Riddick's dwelling was at that time one of the best and most commodious in this county; and that, to the best of his judgment, the loss sustained by him in the destruction of his houses, together with nearly all his furniture and other property, could not have been less than eight thousand dollars; and further he saith not.

HENRY SKINNER.

STATE OF VIRGINIA, *County of Nansemond:*

Personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Henry Skinner, subscriber to the foregoing certificate or affidavit, and made oath to the truth of the same; and I certify that the aforesaid Henry Skinner is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace in and for the county of Nansemond, this 14th day of October, 1833.

JNO. S. DENSON, *J. P.* [L. S.]

Exhibit No. 6.

Nansemond County, Virginia:

I certify that I am now eighty years of age; that I was married and had one child when the revolutionary war commenced; that in the year 1779 I lived only about a mile from Colonel Willis Riddick, when a part of the British army, then said to be stationed at Norfolk or Portsmouth, came up to this county, and burnt the dwelling and barn belonging to Colonel Willis Riddick. That at the time the British burnt this property there was a large quantity of public pork stored in the cellar of the dwelling and in the barn, and that it was the universal opinion of the neighborhood, as the enemy destroyed no other person's property, that these houses were burnt by the enemy in consequence of the public pork being deposited in them. I further certify that Colonel Willis Riddick's dwelling-house was at that time one of the best in this part of the county.

her
CHRISTIAN × WILLIAMSON.
mark.

STATE OF VIRGINIA, *County of Nansemond, November*, 7, 1833:

This day personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Christian Williamson, subscriber to the foregoing certificate, and made oath to the truth and correctness of the same; and I certify that the aforesaid Chrtstian Williamson is an old lady of credibility.

Witness my hand and seal this day and year above written.

WILLIAM SUMNER, *J. P.* [L. S.]

Exhibit No. 7.

STATE OF VIRGINIA, *County of Nansemond:*

I, William Faulk, of the aforesaid county and State, being now nearly seventy-three years old, (born in 1761,) do hereby certify that I well recollect that, in the year 1779, a part of the British army, then quartered at Norfolk, Virginia, came up to this county and burnt the dwelling-house and barn, and several other smaller outhouses, belonging to Colonel Willis Riddick, of this county; that, at the time the British burnt these houses, there was a large quantity of public pork stored in the cellar of the dwelling and in the barns; that it is still my opinion, and was at that time the universal opinion in the county, that these houses belonging to Colonel Willis Riddick were destroyed by the enemy in consequence of their having been made the depository of the public pork. And I further certify that at that time Colonel Willis Riddick's dwelling, thus destroyed by the enemy, was one of the best in this part of the county, and his other outhouses were good; and that, according to the best of my judgment, the loss he thus sustained in the destruction of his property by the enemy could not have been less than eight thousand dollars. Affirmed to and subscribed this 14th day of October, 1833.

WILLIAM FAULK.

STATE OF VIRGINIA, *County of Nansemond:*

Personally appeared before me, the undersigned, a justice of the peace in and for the county aforesaid, William Faulk, (a member of the Society of Friends,) and affirmed to the truth of the foregoing certificate, to which he has affixed his name; and I hereby certify that the aforesaid William Faulk is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace for the county aforesaid, this 14th day of October, 1833.

ISAAC LEE. [L. S.]

Exhibit No. 8.

I, William Milteer, of Nansemond, Virginia, hereby certify that during the year 1779 a part of the British army, then stationed at Norfolk or Portsmouth, came up to this county and burnt the dwelling-house and several other houses on Colonel Riddick's plantation and residence in this county; that at the time this property was destroyed by the British there was a large quantity of pork belonging to the country stored in the houses, and it was generally believed that these houses were burnt by the enemy in consequence of the public pork being stored in them, as they destroyed no other property but this And I certify that, by reason of the destruction of this property and the great loss sustained by Colonel Riddick, he was shortly after visited by a severe mental and bodily affliction, which he never survived; and it was generally believed that this destruction of his property caused this alienation of mind with which he was known to be afflicted.

his
WILLIAM × MILTEER.
mark.

STATE OF VIRGINIA, *County of Nansemond, November* 7, 1833:

This day personally appeared before me, Wm. Sumner, a justice of the peace in and for the county of Nansemond, William Milteer, (an old man who is reported and believed in the neighborhood where he resides to have been a soldier of the Revolution, and I concur in that opinion,) and made oath to the truth and correctness of the same; and I certify that he is a man of credibility.

Witness my hand and seal this day and year above written.

WILLIAM SUMNER. [L. S.]

Exhibit No. 9.

Affidavit of Henry Harrison, of Nansemond County, Virginia.

The affiant, being duly sworn, deposeth and saith: That he is now seventy-eight years of age, and that he was a lieutenant in the militia service, in the county of Nansemond, Virginia, during the revolutionary war; during the year 1779 a detachment of the British army, then quartered at Norfolk, came to this county, burnt the dwelling-house, and probably one or two other smaller houses, belonging to Colonel Willis Riddick; that at the time these houses were burnt there

were between twelve and fifteen hundred barrels of public pork stored in the house and in the cellar of the dwelling; that it was then the universal opinion in the county, and still the opinion of the affiant, that the enemy would not have destroyed Colonel Riddick's houses if the public pork had not been deposited in them, they having visited many other plantations on the road, and several within Colonel Riddick's immediate neighborhood, but destroyed no other property except that, as before stated, in which the public pork was stored. The affiant further saith that Colonel Willis Riddick's dwelling was at that time one of the best in the county; and that, to the best of his judgment, the loss he sustained in the destruction of his houses, his furniture, the corn in his barn, and other property, could not have been less than eight or ten thousand dollars.

HENRY HARRISON.

STATE OF VIRGINIA, *County of Nansemond:*

Personally appeared before me, the undersigned, a justice of the peace in and for the county aforesaid, Henry Harrison, (who is the presiding justice of the aforesaid county,) and made oath to the truth of the foregoing affidavit, to which he has affixed his name; and I certify that the aforesaid Henry Harrison is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace in and for the county aforesaid, this 24th day of September, 1833.

WILLIAM SUMNER. [L. S.]

Exhibit No. 10.

I do hereby certify that I have caused an examination to be made of the books and papers of this office as far as the same could be examined, for the purpose of ascertaining if Willis Riddick ever received compensation from the State for his dwelling-house and outhouses, in the county of Nansemond, which are alledged to have been burnt by the British in 1779, the same having been used as a depository of public stores; and that I have not been able to find any entry or other evidence of such compensation having been made, or of any claim having been presented, on account of the burning aforesaid.

Given under my hand at the auditor's office, Richmond, this 14th February, 1834.

JAMES E. HEATH, *Auditor of Virginia.*

A.—*Colonel Willis Riddick's will.*

In the name of God, amen, I, Willis Riddick, of the upper parish of the county of Nansemond, being sick and weak of body, but, thanks to Almighty God, of sound mind and memory, and calling to mind the uncertainty of this life, do make, ordain, constitute, and appoint this writing as my last will and testament, which is in form and manner following: Imprimus: I recommend my soul and principal part into the hands of Almighty God that gave it me, and my body to the earth, to be decently buried at the usual place of interment of my family, hoping in a joyful resurrection through the

merits of my blessed Redeemer. As for those worldly goods which God has been pleased to bestow on me, I dispose of them in form and manner following: Item: I give and devise unto my grandson, James Riddick, part of the land and plantation, being in North Carolina, in the county of Gates, and known by the name of Salem, and whereon his father, James Riddick, lately lived, to be divided from the other part by a line of marked trees, hereafter to be made, beginning in a line of marked trees between my said land and the lands of John Shepherd; thence running a direct *course across* the centre of my said land, as near as may be, so as to divide my said land in two equal parts, which said land, so divided from the other part, I give unto my said grandson and to his heirs forever; but, in case my said grandson James should depart this life, leaving no lawful issue, in such case I give my said land unto my grandson, Edward Riddick, and to his heirs forever. Item: I give and devise unto my grandson, Edward Riddick, the one other half of my land, called Salem, as above mentioned, and divided to him, my said grandson Edward, and to his heirs forever; but in case he, my said grandson, should depart this life without lawful issue, in such case I give my said land to my grandson, James Riddick, and his heirs forever. Item: I give and devise unto my son, Willis Riddick, my land and plantation situated on the White Marsh, and whereon I formerly lived, to him, my said son Willis, and his heirs forever; but in case my grandson, James Riddick, as my heir-at-law, or his heirs, should hereafter lay *claim* to and recover from my said son Willis the said land and plantation, in consequence of the said land being supposed to be held in *fetale*, then, in such case, I give the one-half of my Salem lands, before devised to my said grandson, James, and whereon my son James lately lived, with the appurtenances, unto my son, Willis Riddick, and to his heirs forever. Item: I give and devise unto my son, Willis *Willis* Riddick, my tract of land lying and being in the Dismal Swamp, at the mouth of the cyprus, to him, my said son, Willis Riddick, and to his heirs forever. I also give and bequeath unto my son, Willis Riddick, my negroes Sam, *Ceaser*, Ellick, Mike, and Pris, to him, my said son, Willis, and his heirs forever. I also give unto my said son Willis the one-half of my stock of cattle and sheep, to him and his heirs forever. *Whereas I have reason to judge that the general assembly of this State will think it just that a proper allowance should be made me for the damage I have sustained in the burning and destroying my houses by the British forces, in such case I give whatever the said allowance may be (if any) unto my said son Willis and his heirs forever.* Item: I give and bequeath unto my daughter, Elizabeth Carr, my negro Phillis, and all the increase she may have had since she, my said negro Phillis, has been in the possession of my said daughter, to her, my said daughter, and her heirs forever. I also give unto my said daughter, Elizabeth Carr, all the personal estate I have possessed her with, to her, my said daughter, and her heirs forever. Item: I give and bequeath unto my daughter, Priscilla Riddick, my negroes Vilet and Cloe and Kate, to her and her heirs forever. I also give unto my said daughter Priscilla two cows and calves, to

be taken out of my stock and allotted her by my executors, to her and her heirs forever. Item: I give and bequeath unto my daughter, Ann Riddick, my negro Bellinder, to her and her heirs forever. Item: I give and bequeath unto my daughter, Teresa Riddick, my negro Lucy, to her and her heirs forever. Item: I give and bequeath unto my daughter, Christian Richardson, my negroes Clerenda and Phillis, to her and her heirs forever. I also give unto my said daughter Christian two cows and calves out of my stock, to be allotted her by my executors. Item: I give and bequeath unto my loving wife, Mary, my negroes Luke, Rose, and Sip, to her and her heirs forever. I also give unto my loving wife the free use of one-half of my household and kitchen furniture; also the use of residue of my stock of cattle and sheep, not heretofore given, during her natural life or widowhood; after which time I give my said household and kitchen furniture, stock of cattle and sheep, to my son, Willis Riddick, and his heirs forever. Item: I give and bequeath all the residue of my estate, of what nature or kind soever, to be equally divided amongst my son, Willis, and daughters, Priscilla, Ann, Teresa, and Christian, share and share alike, to them, my said son and daughters, forever. Item: Lastly, I do nominate and appoint my son, Willis, and my sons-in-law, Josiah Riddick and Archibald Richardson, the executors of this my last will and testament, to which I have hereunto set my hand and fixed my seal this tenth day of April, in the year of our Lord Christ one thousand seven hundred and eighty-one.

WILLIS RIDDICK. [L. S.]

Signed, sealed, published, and declared by the testator, as his last will and testament, in presence of us, the subscribers hereunto:

HENRY RIDDICK.
DAVID CAMPBELL.
her
CHRISTIAN × PARKER.
mark

At a court held for Nansemond county, April 8, 1782, the last will and testament of Colonel Willis Riddick was proved by the oaths of Henry Riddick and David Campbell, two of the witnesses thereto, and ordered to be recorded. Willis Riddick and Archibald Richardson, two of the executors therein named, qualified as such, and gave bond, with security according to law, the other executor named in the said will refusing to qualify, and is truly recorded.

Test: WILLIAM ELEY, *D. C. C.*

NANSEMOND OFFICE,
November 8, 1853.

A copy. Test:

JOHN T. KILBY, *Clerk.*

STATE OF VIRGINIA, } *&c:*
County of Nansemond, }

I, John T. Kilby, clerk of the county court of Nansemond, do hereby certify that the foregoing is a true copy from the original will filed in my office and the records of my said office.

In testimony and faith whereof, I hereunto subscribe my name and [L. S.] cause the seal of my county to be affixed this eighth day of November, A. D. 1833.

JOHN T. KILBY, *Clerk.*

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(Book No. 8, page 592.)

Nansemond County, Virginia:

I, Zacheus Lassiter, being now seventy-six years of age, do hereby certify that I well recollect, sometime during the year 1779, a detachment of the British army, then quartered at Norfolk, came up to this county and burnt the dwelling-house, barn and several other outhouses, belonging to Colonel Willis Riddick, of this county; that I saw the houses whilst they were in flames; and at the time this property was burnt there was a large quantity of public pork, and I think about four hundred barrels of beef, also public property, deposited in these houses thus destroyed by the enemy; that it was the universal opinion of the county at the time that these houses were burnt by the British army in consequence of this public property being deposited there, as the enemy destroyed no other property except this; and I further certify that Colonel Willis Riddick's dwelling-house, then destroyed by the British army, was at that time one of the best in this county, and that the loss he sustained was not less than eight or ten thousand dollars.

his
ZACHEUS + LASSITER.
mark.

Sworn to before me, as a justice of the peace in and for the county of Nansemond, Va., this 7th day of November, 1833.

WM. SUMNER, *J. P.* [L. S.]

STATE OF VIRGINIA, } *&c:*
County of Nansemond, }

I, John T. Kilby, clerk of Nansemond county court, in the State aforesaid, do hereby certify that Wm. Sumner, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county of Nansemond, duly commissioned, qualified, and authorized to act as such, and that the signature purporting to be his is genuine.

In testimony whereof, I hereunto set my hand and cause the seal of my county to be affixed this fourteenth day of November, [L. S.] 1833.

JOHN T. KILBY, *Clerk.*

Affidavit of Henry Skinner, of Nansemond county, Virginia.

The affiant, being duly sworn upon the Holy Evangelist of Almighty God, deposeth and saith: That he is now nearly seventy-four years of age, (born January 16, 1760,) and that he was a soldier of the Revolution; that he distinctly recollects, during the revolutionary war, he thinks in the year 1779, a detachment of the British forces, then quartered at Norfolk, came up to this county and burnt the dwelling, and several other outhouses, belonging to Colonel Willis Riddick; that there was at that time a large quantity of public pork, he thinks more than a thousand barrels, stored in the cellar of Colonel Riddick's dwelling, and in other of his outhouses, and, in the opinion of this affiant, were evidently burnt in consequence of their having been made the depository of the public pork; that this was not only the opinion of the affiant, but of the whole neighborhood, and, in truth, of the whole county, for this detachment of the enemy passed every other house on the road, and visited several others in the same neighborhood, but destroyed no other houses except Colonel Willis Riddick's, as before stated, in which the public pork had been deposited. The affiant thinks there was no other house left on Colonel Riddick's plantation, after the flames had subsided, except the kitchen; that he was sent for to go over and take care of a small remnant of his property which had been saved during the conflagration. The affiant further saith that Colonel Riddick's dwelling was at that time one of the best and most commodious in this county, and that, to the best of his judgment, the loss thus sustained by him in the destruction of his houses, together with nearly all his furniture and other property, could not have been less than eight thousand dollars; and further he saith not.

HENRY SKINNER.

STATE OF VIRGINIA, }
County of Nansemond. }

Personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Henry Skinner, subscriber to the foregoing certificate or affidavit, and made oath to the truth of the same; and I certify that the aforesaid Henry Skinner is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace in and for the county aforesaid, this 14th day of October, 1833.

JNO. S. DENSON, *J. P.* [L. S.]

STATE OF VIRGINIA, }
County of Nansemond, } *sc:*

I, John T. Kilby, clerk of the county court of Nansemond, do hereby certify that Jno. S. Denson, whose name is subscribed to the above certificate, is a justice of the peace in and for the county of Nanse-

mond, duly commissioned, qualified, and authorized to act as such; that due faith and credit are and ought to be given to his acts as a justice aforesaid, and that the signature purporting to his is, in my opinion, genuine.

In testimony and faith whereof, I hereunto subscribe my name and [L. S.] cause the seal of my county to be affixed this 6th day of November, A. D. 1833.

JOHN T. KILBY, *Clerk.*

Nansemond County, Virginia:

I certify that I am now eighty years of age; that I was married and had one child when the revolutionary war commenced; that in the year 1779 I lived only about a mile from Colonel Willis Riddick's, when a part of the British army, then said to be stationed at Norfolk or Portsmouth, came up to this county and burnt the dwelling and barn belonging to Colonel Willis Riddick. That at the time the British burnt this property there was a large quantity of public pork stored in the cellar of the dwelling and in the barn; and that it was the universal opinion of the neighborhood, as the enemy destroyed no other person's property, that these houses were burnt by the enemy in consequence of the public pork being deposited in them.

I further certify that Colonel Willis Riddick's dwelling-house was at that time one of the best in this part of the county.

CHRISTIAN her × mark. WILLIAMSON.

STATE OF VIRGINIA,
County of Nansemond,
Nov. 7, 1833.

This day personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Christian Williamson, subscriber to the foregoing certificate, and made oath to the truth and correctness of the same. And I certify that the aforesaid Christian Williamson is an old lady of credibility.

Witness my hand and seal this day and year above written.

WM. SUMNER, *J. P.* [L. S.]

STATE OF VIRGINIA,
County of Nansemond, } *sc:*

I, John T. Kilby, clerk of the county court of Nansemond, in the State aforesaid, do hereby certify that Wm. Sumner, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county of Nansemond, duly commissioned, qualified, and authorized to act as such, and the signature purporting to be his is genuine.

In testimony whereof, I hereunto set my hand and cause the seal [L. S.] of my county to be affixed this 14th day of November, 1833.

JOHN T. KILBY, *Clerk.*

STATE OF VIRGINIA, }
County of Nansemond. }

I, William Faulk, of the aforesaid county and State, being now nearly seventy-three years of age, (born in 1761,) do hereby certify that I well recollect that in the year 1779 a part of the British army, then quartered at Norfolk, Virginia, came up to this county and burnt the dwelling-house and barn, and several other smaller outhouses, belonging to Colonel Willis Riddick, of this county; that at the time the British burnt these houses there was a large quantity of public pork stored in the cellar of the dwelling and in the barn; that it is still my opinion, and was at that time the universal opinion in the county, that these houses belonging to Colonel Riddick were destroyed by the enemy in consequence of their having been made the depository of the public pork. And I further certify that at that time Colonel Willis Riddick's dwelling, thus destroyed by the enemy, was one of the best in this part of the county, and his other outhouses were good; and that, according to the best of my judgment, the loss he then sustained in the destruction of his property by the enemy could not have been less than eight thousand dollars. Affirmed to and subscribed this 14th day of October, 1833.

WM. FAULK.

STATE OF VIRGINIA, }
County of Nansemond. }

Personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, William Faulk, (a member of the Society of Friends,) and affirmed to the truth of the foregoing certificate, to which he has affixed his name. And I certify that the aforesaid William Faulk is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace for the county aforesaid, this 14th day of October, 1833.

ISAAC LEE. [L. S.]

STATE OF VIRGINIA, }
County of Nansemond, } *sc:*

I, John T. Kilby, clerk of the county court of Nansemond, do hereby certify that Isaac Lee, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county of Nansemond, duly commissioned, qualified, and authorized to act as such; that due faith and credit are and ought to be given to his official acts as a justice aforesaid, and that the signature purporting to be his is, in my opinion, genuine.

In testimony and faith whereof, I hereunto subscribe my name and cause the seal of my county to be affixed this 6th day of November, A. D. 1833.

[L. S.]

JOHN T. KILBY, *Clerk.*

I, William Milteer, of Nansemond, Virginia, hereby certify that during the year 1779 a part of the British army, then stationed at Norfolk or Portsmouth, came up to this county and burnt the dwel-

ling-house and several other houses on Colonel Willis Riddick's plantation and residence in this county; that at the time this property was destroyed by the British there was a large quantity of pork belonging to the country stored in these houses, and it was generally believed that these houses were burnt by the enemy in consequence of the public pork being stored in them, as they destroyed no other property but this. And I further certify that, by reason of the destruction of this property and the great loss sustained by Colonel Riddick, he was shortly after visited by a severe mental and bodily affliction which he never survived; and it was generally believed that this destruction of his property caused this alienation of mind with which he was known to be afflicted.

his
WILLIAM × MILTEER.
mark.

STATE OF VIRGINIA, *County of Nansemond, November* 7, 1833:

This day personally appeared before me, Wm. Sumner, a justice of the peace in and for the county of Nansemond, Wm. Milteer, (an old man, who is reputed and believed in the neighborhood where he resides to have been a soldier of the Revolution, and I concur in that opinion,) and made oath to the truth and correctness of the same. And I certify that he is a man of credibility.

Witness my hand and seal, as a justice of the peace, this day and year above written.

WM. SUMNER, *J. P.* [L. S.]

STATE OF VIRGINIA, *County of Nansemond, sc:*

I, John T. Kilby, clerk of the county court of Nansemond, in the State aforesaid, do hereby certify that Wm. Sumner, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county of Nansemond, duly commissioned, qualified, and authorized to act as such, and that the signature purporting to be his is genuine.

In testimony whereof, I hereunto set my hand and cause the seal of my county to be affixed this 14th day of November, 1833.

[L. S.]

JOHN T. KILBY, *Clerk.*

Affidavit of Henry Harrison, of Nansemond county, Virginia.

The affiant, being duly sworn, deposeth and saith: That he is now seventy-eight years of age, and that he was a lieutenant in the militia service in the county of Nansemond, Virginia, during the revolutionary war; that he well recollects that sometime during the year 1779 a detachment of the British army, then quartered at Norfolk, came to this county and burnt the dwelling and barn, and probably one or two other smaller houses, belonging to Colonel Willis Reddick; that at the time these houses were burnt there were between twelve and fifteen

hundred barrels of public pork stored in the barn and in the cellar of the dwelling; that it was then the universal opinion in the county, and is still the opinion of this affiant, that the enemy would not have destroyed Colonel Riddick's houses if the public pork had not been deposited in them, they having visited many other plantations on the road, and several within Colonel Riddick's immediate neighborhood, but destroyed no other property except that, as before stated, in which the public pork was stored.

The affiant further saith that Colonel Willis Riddick's dwelling-house was at that time one of the best in the county, and that, to the best of his judgment, the loss he then sustained in the destruction of his houses, his furniture, the corn in his barn, and other property, could not have been less than eight or ten thousand dollars.

HENRY HARRISON.

STATE OF VIRGINIA, *County of Nansemond:*

Personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Henry Harrison, (who is the presiding justice of the aforesaid county,) and made oath to the truth of the foregoing affidavit, to which he has affixed his name. And I certify that the aforesaid Henry Harrison is a man of truth and credibility.

Given under my hand and seal, as a justice of the peace in and for the county aforesaid, this 24th day of September, 1833.

WM. SUMNER. [L. S.]

STATE OF VIRGINIA, *County of Nansemond, sc:*

I, John T. Kilby, clerk of the county court of Nansemond, do hereby certify that Wm. Sumner, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county of Nansemond, duly commissioned, qualified, and authorized to act as such; that due faith and credit are and ought to be given to his acts as a justice aforesaid, and that the signature purporting to be his is, in my opinion, genuine.

In testimony and faith whereof, I hereunto subscribe my name and cause the seal of my county to be affixed this 6th day of November, A. D. 1833. [L. S.]

JOHN T. KILBY, *Clerk.*

[For plat, see original, p. 16]

Colonel Willis Riddick's houses, burnt by the British in 1779, were invisible from any part of the public or private roads, and some enemy of the country must have informed the British that the public provisions were stored in those houses.

I certify that I have lived in the county of Nansamond, in the State of Virginia, for many years, and have represented that county in the house of delegates for the last three years, and that I know the situation of the country, as above described, to be correct.

RICHARD D. WEBB.

UNITED STATES COURT OF CLAIMS.

Brief of petitioner.

N. RIDDICK *vs.* UNITED STATES.

The case is fully stated in the petition.

In the argument the following propositions and authorities will be relied on:

The property having been destroyed by the public enemy while it was in the use and occupation of the United States as a depot for military stores, the government is bound to indemnify the parties losing it.

See report of committee in the case of Samuel Young, Revolutionary Claims, 341.

Reddick's case, 342.

Acts of Congress, August 2, 1813, chap. 43, p. 124, vol. 6; p. 163, chap. 66; p. 165, p. 193, p. 211, p 254; pp. 261, 264, 265, 268, 273, 281, 295, 299, 300, 314, 316, 325, 361, 379, 403, 411, 412; vol. 6, 207; vol. 3, 261, 397, 398; vol. 4, p. 123.

Vattel, book 1, chap. 20, sec. 243.

S. S. BAXTER.

NATHANIEL RIDDICK, adm'r, &c., of Colonel Willis Riddick, deceased,
vs.
THE UNITED STATES.

This is a claim for property destroyed by the British during the revolutionary war, whilst the same was used for the purposes of the government. The petition, in this case, sets forth the facts of the case, and alleges that the property was thus destroyed because of such use.

The questions which present themselves to the court are, first, are the facts alleged true; second, is the testimony on which the claim is founded sufficient as it is now presented; and if so, third, how much should be paid?

1. The fact that Colonel Willis Riddick owned valuable and costly houses, &c., is proved by *all the witnesses* whose affidavits are filed in the case; and the several authorities referred to in the petition prove that large *amounts of property and government stores* were destroyed by the British general (Matthews) near Suffolk and adjacent places. (See Marshall's Life of Washington, vol. 4, p. 41; Howe's History, &c., of Virginia, p. 117 and p. 387; Henry Lee's Memoirs, p. 54, and second volume Lee's Memoirs, p. 4.)

There can, then, be no doubt but that the facts are true as above alleged, and, further, that Colonel Riddick was greatly impoverished thereby, and considered he had a just claim therefor. (See his will.)

2. This claim was presented to Congress twenty years ago, and the facts proved by persons who were *then living*, as appears by the affidavits aforesaid, and every one establishes the fact that the property of Colonel Willis Riddick was used for the public, and, in consequence

of such use, invited an attack from the British, and which did actually take place, and the property destroyed. Congress, by its committee, reported favorably on the case from year to year, and the House of Representatives passed the same, but the session ended before the Senate reached the case. The testimony then presented in the case, though somewhat *ex parte*, was ample to satisfy those whose only province it was to decide of the justice of the claim, at least to the extent of the actual loss. The witnesses who thus testified are *now all dead*, and hence the testimony now offered *is the best that can be had;* and to require living testimony now to be taken under notice would at once defeat the claim, and the reference by Congress (where the case was sufficiently made out) to this honorable court would be mere mockery. Living testimony can be had to prove that the several persons who gave their testimony were respectable persons; but this fact already appears by the justices' certificates annexed. Congress has thought proper to confer jurisdiction of this case on this court, and it was, doubtless, to authorize the court to act in the case as in all others of similar character, according to justice and right, especially so in cases which are rather of a meritorious class than otherwise. But this claim is not only eminently just and equitable, but the government should pay it because the property was used for the government, and hence a claim for use and occupation is well founded; and a claim for damages, whilst *out* of the control of the owner, occasioned by the act of government, is also well founded, and hence the government became liable, in law and justice, to pay, *at that time*, the damages to which Colonel Willis Riddick was so justly entitled.

3. The petitioners claim the amount of the damages as above, with interest on the same. The committee of Congress thought proper only to allow the actual damage done, ($8,000,) but we allege that, according to the uniform action of Congress in such cases, interest has generally been allowed, and why not? Is the claim just? That cannot be denied. If just, why should the government refuse to be as just to *her citizens as she requires one citizen to be to another?* It will not do to say that the claim is too old to pay interest on. That is not the fault of the claimant, but the government. As far back as the date of the will of Colonel Riddick, he expected the government to authorize the payment of his claim; that it did not do so was not his fault; he could not control the matter; and now for twenty years the parties have been annually asking payment. It is not their fault that it is not paid; and whatever objection there may be to allowing interest previous to the 23d Congress, surely there can be none against allowing it from that time The court will see by reference to the volume entitled "Revolutionary Claims," (prepared by Walter S. Franklin, former Clerk of the House of Representatives,) p. 108 to 117, that up to that time near eighteen hundred revolutionary claims (and a number of them very similar to this one, to wit: Wm. Dewees, named in the petition, A. McKnight, Thomas Frothingham, J. & J. Pettigrew, &c.,) had been allowed, and that interest was allowed on 1,754. Hence it will be seen that the *rule is to pay interest*, and the exception *not to pay*.

We confidently believe that but few claims have more equity in it

than this. Here a patriotic citizen, himself an officer of the militia, active in defending the rights of the government, surrenders his estate to the public for the public good, and in consequence has his property destroyed and he becomes poor; what stronger claim can there be for compensation? So careful is the government and the people of the rights of a citizen that it has been made the fundamental law that no man's property shall be taken for public use without just compensation; and hence if the claim was for property *forcibly* taken by the government, no one would question the right to damages and interest from the time; and shall it be urged that because the property in question was not taken by force or by law for the purposes of government, but readily and patriotically granted for the public good, that the claim shall not be allowed, and thus make the liberality and patriotism of a citizen the means of his own punishment and loss? We believe not.

The compensation asked for is, as before intimated, just such as the government has recognized in a vast number of cases, some of which are referred to in the petition; and hence the principle has long since been settled.

This claim would doubtless have become law long since if it had been intrusted to some agent who would have hung around the members of Congress and annoyed them into its consideration; but the parties, believing in its justice, have intrusted it to the members of Congress from the district, who have given the case their cordial support—facts which should not be altogether overlooked, especially in connexion with any argument as to delay, &c.

In conclusion, we ask a judgment for the entire claim as set forth in the petition, certainly for the $8,000, with interest from the time the case was first presented to Congress.

JOHN R. KILBY,
S. S. BAXTER,
Attorneys.

IN THE COURT OF CLAIMS.

N. RIDDICK, ADM'R OF WILLIS RIDDICK, *vs.* THE UNITED STATES.

LORING, Justice, delivered the opinion of the court.

The facts in the case are, that in 1779 a large quantity of beef and pork was stored in the house and outhouses of Willis Riddick, then colonel commandant of the militia in Nansemond county, Virginia; that a detachment from the English forces, then stationed near Norfolk, marched into Nansemond county, searched the houses in the vicinity of Col. Riddick's, and his also, and found the beef and pork stored in his buildings, and destroyed the provisions and the buildings also, and did not injure the other houses and buildings which they searched. Col. Riddick's buildings were secluded from view from the road, and therefore offered a favorable place for the concealment of the stores from the enemy; and it is the fair inference, from the

facts in the case, that the beef and pork were stored in Colonel Riddick's buildings for their concealment and protection from the enemy; and that the buildings were destroyed because the provisions were stored there. The petitioner alleges that Col. Riddick's buildings were used for concealing the provisions with his assent, but there is no evidence by whose authority or command the provisions were carried to Col. Riddick's house.

It was proved that Col. Riddick's house was one of the best in the neighborhood, and that the value of the buildings burned, and of the furniture, &c., contained in them, was, at the time, from eight to ten thousand dollars.

The petitioner claims for the loss of Col. Riddick by the transaction stated $8,000, and interest thereon for seventy years.

The petitioner alleges that the provisions stored and destroyed in Col. Riddick's house belonged to the United States; that fact is the ground of his claim, but it is not clearly proved by the evidence in the case.

Col. Riddick died in 1782, and in his will, dated April 10, 1781, he made the following bequest: "Whereas I have reason to judge that the general assembly of this State will think it just that a proper allowance should be made for the damage I have sustained in the burning and destroying of my houses by the British forces, in such case I give whatever the said allowance may be, if any, unto my son Willis and his heirs, forever." This would seem to show very clearly that Col Riddick considered his claim was on the State of Virginia, and the only conceivable ground for that would be, because the provisions which were stored in his houses and induced their destruction belonged to the State of Virginia. The ownership of the provisions was a matter about which Col. Riddick could hardly have been mistaken, from his connexion with the transaction, from the nature of it, and his official position at the time; and if the provisions belonged to Virginia, his action in protecting them is explained as directly within the line of his duty, and his authority, as an officer of Virginia commanding in that county; and these considerations are to be connected with the fact that the evidence does not show that the provisions were in the custody or charge of any officer of the United States, or were removed to Col. Riddick's house by the assent or action of any such officer.

Then, of the six witnesses who were living at the time of the transaction and witnessed it, and testify to it in 1833, five speak of the provisions as "*public*" property; and the term "*public*" is as applicable to the property of Virginia as to that of the United States, and cannot be relied upon as distinguishing between them. The other witness, William Milton, speaks of the provisions as "belonging to the country," and thus describes it as the property of the United States. But he testifies thirty-four years after the transaction; his remark is casual so far as his attention was not called to the particular point of ownership; his means of information are not shown, and there is no reason for inferring that they were at all equal to Col. Riddick's as to the particular matter of title.

On the other hand, it appears that the case was before Congress as

early as 1834 and subsequently; and it was not questioned there that the provisions belonged to the United States; but no consideration of the point of title is shown in the congressional documents in the case.

It may be that the provisions were collected by Virginia to be rendered as portion of her quota of supplies for the United States; but of that fact there is no evidence, and without evidence it cannot be assumed. That the act of Colonel Riddick was meritorious; that its purpose was the furtherance of the defence of the country; and that for this his property was perilled and destroyed, it is certain; and the lapse of time makes it improbable that any further evidence as to the ownership of the provisions can be adduced. But as the case does not show that the provisions were ever in the possession of the United States, or the custody of any officer of the United States, or were removed by the authority, or with the assent of any such officer; and as the testimony before this court leaves the question of title doubtful, we find as a legal result that the petitioners have not established their claim to the relief they pray for.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 201.

ISAAC SWAIN.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

ISAAC SWAIN *vs.* THE UNITED STATES.

1. The petition of the claimant, referred by the Senate to the Court of Claims.
2. Transcript of the record in the cause of R. Orsegon et al. *vs.* The ship Ellen Brooks, transmitted to the Senate.
3. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 5th day of December, [L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

The honorable the Senate and House of Representatives:

Your petitioner, Isaac Swain, a resident citizen of California, would with respect represent unto your honorable bodies that the government of the United States is justly indebted to him in the sum of $28,704 49, for the particulars of which indebtedness reference is had to the annexed copy of a petition to the United States Court of Claims, in which he then claimed the sum of $37,729 49, as follows:

For forfeiture of charter party	$4,000 00
Transporting 250 tons freight to government post	1,250 00
Damages sustained to ship	3,550 00

Damages to cargo as per award, (United States court)...	$6,704 49
Expenses of defending suit.....	225 00
Cost of vessel in October, 1850.....	10,000 00
Damages in interest, loss of time, &c.....	12,000 00
	37,729 49

Your petitioner would represent that the said Court of Claims allowed him the second and third items contained in the above bill, but rejected all the others, except the fourth item of $6,704 49, which they say in their decision, as reported to your honorable bodies during the last session of Congress, they cannot allow, as the record of the United States district court not being complete is inadmissible as evidence to establish the amount. The correctness of the charge is not questioned by the court; but under the technical rules of evidence, your petitioner failed to prove the amount of damages for which his vessel was libelled, condemned, and sold. Since then your petitioner has procured a perfect copy of the said record, and presents the same to your honorable bodies, and prays that the amount disallowed by the Court of Claims, to wit, the said amount of $6,704 49, for the want of a perfect transcript of the record, may now be allowed and paid your petitioner.

Petitioner would further represent that he is entitled to compensation for his ship, the Ellen Brooks, which was proved to be worth $10,000, as well as reasonable damages for his loss of time, interest of money, &c., and prays your honorable bodies to allow him these items which were rejected by the said Court of Claims.

Petitioner would represent that all the evidence is on file with the papers in this case which was before the last Congress, as reported from the Court of Claims, and upon which he was allowed and paid the two items before named.

ISAAC SWAIN,
By his attorney, A. H. EVANS.

WASHINGTON, *November* 17, 1857.

IN THE COURT OF CLAIMS.

ISAAC SWAIN *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

On the first day of August, A. D. 1856, this court reported to Congress a bill in favor of the petitioner, and by an act approved March 3, A. D. 1857, it was provided as follows: "That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Isaac Swain the sum of four thousand eight hundred dollars, in full, for freight on stores for the army of the United States, from Benicia, in California, to the govern-

ment hulk or post landing, near that place, and for injuries received by his ship, Ellen Brooks, whilst lying at said post landing."

In the original case, the petitioner claimed "for damages to cargo, as per award of United States district court, $6,704 49," and "for expenses in defending suit, $225." In regard to this claim, this court said: "The claim for 'damages to cargo, as per award of the United States district court, $6,704 47,' and 'for expenses in defending suit, $225,' is not sustained by the evidence. The paper filed by the petitioner is a mere abstract, and not a complete copy of the record of the case in which the damages and costs claimed were awarded, and is, therefore, inadmissible as evidence in this case."

Subsequently the petitioner, having obtained a copy of the record above referred to, presented his petition to the Senate of the United States, and on the 30th day of March, A. D. 1858, the Senate adopted the following resolution: "That the case of Isaac Swain, and the papers accompanying the same, be referred to the Court of Claims, to inquire and decide whether the government of the United States is legally liable for the amount, or any part thereof, recovered against the ship Ellen Brooks, or the owner thereof, in the United States district court for the northern district of California, in the suit of Raphael Orego and others, libellants, in the year 1851, and to report to Congress what amount, if any, of said recovery, and of the costs, charges, and expenses of defending said suit, the United States are legally liable, and ought to pay to said Isaac Swain, owner of said ship."

The record in the suit of Raphael Orego and others, mentioned in the resolution, shows as follows:

1. The libellants claimed damages for a breach of contract. They alleged that on or about the 24th day of April, A. D. 1851, under a contract with the petitioner, master of the Ellen Brooks, they delivered to him certain merchandise of the value of $8,000, to be carried for freight from Valparaiso, Chili, to San Francisco, California; and that the petitioner unnecessarily deviated from the direct and usual course of the voyage, and passing by San Francisco, proceeded to Benicia, whereby their merchandise was damaged to the amount of $3,000.

2. George Sears and others, mariners on board the Ellen Brooks, intervened, claiming a large amount for wages.

3. James Duncan also intervened, claiming damages for a breach of contract. He alleged that under a contract with the petitioner, master of the Ellen Brooks, he delivered to him merchandise of the value of $8,000, to be conveyed for freight from Valparaiso to San Francisco; and that the petitioner unnecessarily deviated from the direct and usual course of the voyage, and passing by San Francisco, proceeded to Benicia, whereby he sustained damages to the amount of $2,000.

4. William F. Clark also intervened, claiming a large amount on a bottomry bond. He alleged that on or about the 28th day of October, A. D. 1850, Caleb A. Smith and John E. Smith, part owners of the Ellen Brooks, in consideration of the sum of $2,300 to them advanced by Isaac Swain, did, by a certain bond or instrument of bottomry, of that date, bind the said ship for the payment of the sum of $2,300,

with five per cent. per month marine interest, within thirty days after her safe arrival in San Francisco from a certain voyage on which she was then bound; that the ship, having by means of said loan been fitted for sea, proceeded on her voyage, and returned in safety to San Francisco on the 29th day of July, A. D. 1851; that the bottomry bond was assigned by Swain to Enoch Cook, who assigned it to the libellant; and that the $2,300 and interest had not been paid.

5. On the 26th day of August, A. D. 1851, by consent of the advocates of the respective parties, an order was made that it be referred to a commissioner, to ascertain amounts due, and report to the court with all convenient speed

6. William M. Joliffe also intervened, claiming compensation, as a pilot, for services rendered in piloting the Ellen Brooks on the 7th day of July, A. D. 1851, from sea to San Francisco harbor, and thence on the same day to Benicia.

7. On the 28th day of August, A. D. 1851, by consent of the proctors for the parties interested, it was ordered by the court that a "*venditioni exponas*" issue, and that the Ellen Brooks be sold by the marshal, and the proceeds thereof be paid into the registry of the court, to be distributed as the court might thereafter decree.

8. The marshal made sale of the Ellen Brooks at the price of $3,415.

9. The commissioner made a report, in which he found and stated a large amount due for mariners' wages.

10. The commissioner made another report, in which he found and stated as follows:

(*a*) That there was due to the libellants for damages sustained by breach of contract	$866 00
(*b*) That there was due to the intervener, James Duncan, for damages sustained by breach of contract	1,400 70
(*c*) That there was due to the intervener, William H. Joliffe, for pilotage	256 00
(*d*) And that there was due to the intervener, William F. Clark, on the bottomry bond	3,538 16

11. On the 24th day of September, A. D. 1851, the court made the following decree:

"INTERVENTION OF MARINERS IN SUIT OF RAPHAEL OREGO et al. *vs.* THE SHIP ELLEN BROOKS.

"On reading and filing the report of William Barber, United States commissioner, to whom the above matter was referred, by which there is due the interveners, for mariners' wages, the sum of two thousand eight hundred and fifty-six dollars, on motion of Annis Merrill, proctor for the interveners, *It is ordered*, That the report be in all things confirmed, and that the interveners in this action against the ship Ellen Brooks, the amount reported due, together with their costs to be taxed.

"And on like motion, *It is further ordered*, That out of the proceeds of the said ship Ellen Brooks, when paid into the registry of the court, the clerk of this court pay to the interveners, or their proctors, the amount reported due, together with his taxed costs, to wit:

To George Sears	$565 79
Edward Childs	173 83
George W. Doladson	326 87
Horatio Nelson	321 82
John W. Olener	154 36
Winslow L. Gray	171 17
William Green	162 52
John Adams	150 58
Samuel Chadwick	145 10
William Hastings	31 34
Antonio Jackson	192 56
Frank Evans	169 68
——— Williams	109 50
Daniel F. Wright	181 45
	2,856 07"

12. Then follows the taxation of costs, viz:

(*a*) Protor's fees, amounting to	$49 50
(*b*) Advocate's fees, amounting to	16 12½
(*c*) Marshal's fees, amounting to	347 72
(*d*) Clerk's costs, amounting to	131 29
(*e*) Commissioner's fees, amounting to	99 00
Making a total of	643 63½

It appears, therefore, from the above-mentioned record, that the amount decreed in favor of the interveners for mariners' wages was the sum of $2,856 07
For taxed costs, the sum of 643 63

Making a total of 3,499 70
The Ellen Brooks was sold for 3,415 00

Excess of total amount of decree over proceeds of sale... 84 70

Hence it is plain that the whole proceeds of the sale of the ship Ellen Brooks were applied to the payment of mariners' wages and the costs of suit.

According to our construction of the decree, which has been noticed, the mariners' wages and the costs constituted the entire amount recovered against the ship Ellen Brooks in the suit of Raphael Orego and others. There was no recovery whatever in that suit against the owner of the ship, personally.

There is, it seems to us, no conceivable ground on which the United States can, in any way, be liable for the mariners' wages or for the costs attending their recovery.

It is equally plain, we think, that the United States are in no way liable, either for the amount reported due to William H. Joliffe, for

pilotage, or for the amount reported due to William F. Clark on the *bottomry bond*. This is self-evident.

The sum reported due to the libellants, ($866,) as well as the sum reported due to James Duncan, ($1,400 70,) was for damages occasioned by a breach of contract. The breach alleged in each instance was, that the petitioner "wilfully, negligently, and unnecessarily deviated from the direct and usual course of said voyage, and, passing by the port of San Francisco, proceeded to the port of Benicia where he delayed unreasonably and unnecessarily a considerable period of time, viz: for the period of twenty days, whereby the merchandise shipped by the libellants as aforesaid was greatly damaged and lessened in value, both from decay and other injury sustained by reason of the said deviation and delay, and, also, in consequence of a decline in the market value of the said merchandise at the aforesaid port of delivery during the unnecessary detention and delay aforesaid."

Now, it will be observed that under the charter-party with the United States, the petitioner undertook to "proceed direct to Benicia;" and that a compliance with this contract was necessarily a breach of the contract with the libellants, and of the contract with James Duncan; whilst, if he had gone directly to San Francisco, it would have been a breach of his contract with the United States. But this was a dilemma in which he voluntarily involved himself, and the United States are in no respect liable for the consequences.

It will be observed, too, that in our former opinion we held that, under the implied contract between the petitioner and the United States, the original contract is to be resorted to for the number of days to be allowed for the delivery of the goods. Under the original contract ten working days were allowed for that purpose. It nowhere appears whether the damages reported in favor of the libellants and in favor of James Duncan accrued prior to or during the ten days during which the petitioner was bound, if necessary, to remain at the government hulk, or afterwards. If they accrued prior to or during the ten days, there can be no pretence that the United States are liable. But even if such damages accrued after the expiration of the ten days, still there is no circumstance in this case from which it can reasonably be inferred that the United States undertook to be liable therefor. They were liable for the freight to Benicia, and thence to the government hulk; for damages, by way of demurrage, for the detention beyond the ten days; and for the actual damages sustained by the ship. All these have been paid. Our opinion is, that there is no further liability on the part of the United States.

We are, therefore, of the opinion, and do decide, that the government of the United States is not legally liable for the amount, or any part thereof, recovered against the ship Ellen Brooks, or the owner thereof, in the United States district court for the northern district of California, in the suit of Raphael Orego and others, libellants, in the year 1851, or for the costs, charges, and expenses of defending that suit, or any part thereof, and that the government of the United States ought not to pay the same, or any part thereof.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 202.

NANCY D. HOLKAR, ADMINISTRATRIX OF JOHN HOLKAR.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

NANCY D. HOLKAR, ADMINISTRATRIX OF JOHN HOLKAR,
vs. THE UNITED STATES.

1. The petition of the claimant.
2. Deputy solicitor's brief.
3. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 5th day of December, A. D. 1859.

_____,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Nancy D. Holkar, administratrix of John Holkar, deceased, respectfully showeth:

That on the 2d day of January, 1780, the deceased, John Holkar, was in possession and the owner of thirty-seven loan office certificates, issued under the authority of the Congress of the United States during the revolutionary war, to the nominal amount of $21,700; that on the said 2d day of January, 1780, the house of the said Holkar, in the city of Philadelphia, was burned, and these certificates, with other property and articles, were destroyed; that at the time of this accident there existed no statute providing for the renewal of the certificates of

this character which might have been lost; that shortly after this loss occurred, the fact was communicated both to Congress and the Superintendent of Finance, and a renewal of the certificates was claimed; that on the 10th of May, 1780, Congress resolved "That loan office certificates destroyed through accident be renewed and delivered to the persons who shall appear to have been the holders of them at the time they were destroyed," on certain terms and conditions.—(*Journals of Congress, vol. 3, p. 436.*)

During a long series of years applications were made to the Treasury Department and to Congress for the renewal of these certificates, or for the payment of the amount due upon them. It seems unnecessary to recapitulate these various acts on the part of the deceased, and the action of Congress and of the officers of the government upon them.

On the 29th of April, 1816, an act of Congress was passed specially to meet this case, which will be found in 6 Statutes, 175. The justice of the case was distinctly recognized, but the relief which it provided proved (undoubtedly by accident) greatly inadequate.

The act provides that "the accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle the account of John Holkar, formerly consul general of France to the United States, for thirty-seven loan office certificates, amounting to twenty-one thousand seven hundred dollars;" then setting out the various offices from which they had issued, and their several amounts, and then proceeds: "and the specie value thereof, being five thousand eight hundred and three dollars and thirty-five ninetieths, be paid, with interest thereon at six per cent. from the third day of July, one thousand seven hundred and seventy-eight, being the mean date of interest on the same, as examined and stated in the office of the Auditor of the Treasury on the 25th October, 1794," &c. This statement or report of the Auditor your petitioner has not been able to procure.

By the act of Congress just cited, it is established that John Holkar was the owner of the thirty-seven loan office certificates to the amount of $21,700; that the medium date of these certificates was the 3d July, 1778, from which time interest was to be calculated, and that the specie value of the certificates was to be estimated as of that day; that in the settlement of the specie value of loan office certificates on the 3d July, 1778, a palpable error was committed, to the great injury of the then claimant, he then being an aged man, and broken down by his ineffectual efforts for thirty-six years to obtain redress, will now be shown. Whether this error, doubtless unintentional, had its origin in Congress or in the Treasury Department, your petitioner is unable to determine; but wherever and whatever was its source, the mistake and consequent injury are so palpable as to justify the entire confidence which is entertained that it will now be rectified.

A reference to the act of Congress of April 29, 1816, not only gives the number of the loan office certificates for which provision is made as thirty-seven, the aggregate nominal value of them as $21,700, but enumerates the several offices from which they had been issued, and the fact that they had been destroyed by a fire in the consulate office in Philadelphia on the 2d January, 1780, but it also assigns the 3d day of July, 1778, as being the data of interest on the same, as

examined and stated in the office of the Auditor of the Treasury on the 25th October, 1794.

Thus far all is correct; and from these data the ascertainment of the sum actually due is a mere matter of plain calculation. The aggregate amount of the certificates is stated at $21,700; the mean date from which interest is to be calculated the 3d July, 1778. But the act proceeds to set forth the specific value of the certificates as being $5,803 $\frac{3}{90}$, which amount, with the interest from July 3, 1778, it directed to be paid. The error complained of is in the fixing of the specie value.

It will be perceived that this specie value is a few hundred dollars more than the one-fourth of the nominal amount on the face of the certificates. But under the provisions of the laws as they then stood, the depreciation on the 3d July, 1778, was at the rate of $1 75 for one Spanish milled dollar; and it was not till September following that the rate of depreciation was as one to four. To substantiate this, reference to the Journals of Congress, vol. iii, p. 473, is requested, where will be found, under date of June 28, 1780, the precise provisions made by law on this subject. In order that the entire case may be exhibited in this petition, some of the language of the resolutions of Congress of that date will be here cited:

"Whereas Congress, on the 18th April last, resolved in the words following, viz: 'That Congress will, as soon as may be, make such provision for discharging or continuing the loans that have been made to these United States on loan office certificates, so as that the holders of them shall sustain no loss thereon by any depreciation of the bills loaned subsequent to the respective dates of the said certificates,' therefore: *Resolved*, That the principal of all loans that have been made to these United States shall finally be discharged by paying the full current value of the bills when loaned, which payments shall be made in Spanish milled dollars, or the current exchange thereof at the time of payment.

"That the value of the bills when loaned shall be ascertained for the purpose above mentioned, by computing thereon a progressive rule of depreciation, commencing with the 1st day of September, 1777, and continuing till the 18th day of March, 1780, in geometrical proportion to the time, from period to period, as hereafter stated, assuming the depreciation at the several periods to be as follows, viz: on the 1st March, 1778, one dollar and three-quarters of a dollar of the said bills for one Spanish milled dollar; on the 1st September, 1778, as four of the former for one of the latter," &c.

It thus appears that from the 1st of March, 1778, till the 1st September, 1778, the specie value of the loan office certificates was to be in the proportion of one and three-fourths of the nominal amount to one Spanish milled dollar. The mean date of the certificates in question being the 3d July, 1778, their specie value was thus fixed. According to this rule the specie value of the thirty-seven certificates held by Mr. Holkar was $12,400; instead of which, by what principle it is not easy to determine, it was fixed at $5,805, leaving the balance, $6,594, unpaid and unprovided for.

For this sum, together with interest from the day indicated in the

act of Congress as the mean date of these certificates with interest till paid, your petitioner prays the judgment of this honorable court and the appropriation by Congress.

RICHARD S. COXE, *For Petitioner.*

Appended to this petition will be found—

Exhibit 1. A certificate from the clerk of the county of Frederick, State of Virginia, that petitioner is the administratrix of John Holkar, deceased.

Exhibit 2. A letter from the Hon. James Guthrie, Secretary of the Treasury, under date of May 3, 1854, addressed to Hon. James Cooper, United States Senate, showing the settlement and payment to John Holkar of $18,973 93, under the act of April 29, 1816.

R. S. C.

Exhibit No. 1.

VIRGINIA, *sct:*

At a court held for Frederick county on the third day of June, 1822—

On the motion of Nancy D. Holkar, who made oath, and, together with Nathaniel Burwell and Lemuel Bent, her securities, entered into and acknowledged a bond in the penalty of ten thousand dollars, conditioned as the law directs, certificate is granted the said Nancy D. Holkar for obtaining letters of administration on the estate of John Holkar, deceased, in due form.

I, Thomas A. T. Riley, clerk of the county court in and for the State and county aforesaid, do hereby certify that the foregoing is a true copy from the records of said court.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said county court, on this the 16th day of January, 1857, and the 81st year of the commonwealth.

THOS. A. T. RIELY, *C. C.*

Exhibit No. 2.

TREASURY DEPARTMENT, *May* 3, 1854.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant, requesting to be informed "what settlement, if any, has taken place between the United States and John Holkar, under act of Congress of 29th April, 1816," and have to state, in reply, that on the 2d May, 1816, a warrant was issued in his favor for $18,973 93, being the specie value of thirty-seven loan office certificates destroyed by fire in the consulate office in Philadelphia on the 2d January, 1780, including interest thereon from 3d July, 1778, to 29th April, 1816, paid in pursuance of the act referred to in your letter.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. JAMES COOPER,
United States Senate.

IN THE COURT OF CLAIMS.

No. 1456.—TRIALS, 182.

JOHN HOLKAR'S ADM. *vs.* THE UNITED STATES.

Solicitor's Brief.

The petitioner's intestate was the holder of certain loan office certificates which were destroyed by fire. He did not take the necessary measures to have them renewed, and they were barred by limitation, (Treasury Report, February 20, 1816; American State Papers, Claims, p. 470;) but nevertheless, Congress, by act of April 29, 1816, (6 Stat., 175,) paid them with interest from July 3, 1778; estimating that the sum of $21,700 in continental money, which was paid for the certificates, was worth when paid $5,803 $\frac{3}{9}$ in specie.

The petitioner alleges that the specie value was erroneously computed, and should have been stated at $12,400, which he arrives at in this manner:

1st. That under the act the value of the continental money must be computed as it was on the 3d of July, 1778.

2d. That its value on that day was as $175 of continental money for $100 of specie.

On both these points the petitioner is in error.

1. The act does not fix the 3d of July as the date of the certificates; it is the date for the commencement of interest, which *averages due* according to a common mode of mercantile computation from that date. If interest run on $100 from the 3d of June, and on another $100 on the 3d of August, the commercial usage is, for convenience, to compute interest on the $200 from the 3d of July; but when a question is made as to the value of the articles for which the several sums were due we must refer to the true dates; the assumed date has no connexion with that question.

The debt due by the United States in this case was for depreciated continental money paid into the loan offices. The value of the money depended on the date when it was paid in.

The dates of the certificates would show this. Those dates appear on record in the Treasury, and are stated in the printed documents of Congress, (American State Papers, Claims, p. 258.) The continental money was paid in as follows:

July 2, 1777	$300
October 31, 1777	300
January 1, 1778	300
March 13, 1778	1,200
May 21, 1778	300
July 25, 1778	800
August 11, 1778	7,000
October 28, 1778	2,000
November 1, 1778	9,500
Total	21,700

The whole question then is, what was the value of these several sums on the days when they were paid in? And it is agreed that the value must be ascertained by the scale of depreciation established by the resolution of June 28, 1780, (3 Journals, 473,) cited by petitioner.

The petitioner errs in supposing that the rate of depreciation according to that resolution was on the 3d of July, 1778, as $1 75 to $1. That was the rate on the 1st of March, 1778, and she seems to suppose that the rate remained the same till September 1, 1778; that is to say, that the rate fixed for any specified day took effect on that day, and remained the same till the next rate took effect on the next specified day. Under this construction there is no depreciation from September 1, 1777, to March 1, 1778, contrary to the express words of the resolution, which says it must commence on the 1st of September, 1777, and contrary to the construction given it by this court in the case of Nahum Ward, where loan office certificates for $400 issued December 23, 1777, were held to be worth $282 44, or at the rate of $1 40 to $1.

The provisions of the resolution are substantially these: that the depreciation commenced to run from September 1, and proceeded by a "progressive rule" "in geometrical proportion to the time."

And the rate of depreciation was such that the amount of continental money equivalent in value to a dollar in specie was—

On the 1st of September, 1777, $1, or par.

On the 1st of March, 1778, $1 75, or 43¾ per cent. discount.

On the 1st of September, 1778, $4, or 75 per cent. discount.

On the 1st of March, 1779, $10, or 90 per cent. discount, &c., &c.

What the depreciation was at intermediate periods—on any other days of the several years—we are left to determine by computation. A rough calculation will show that the depreciation on the 3d of July, 1778, was about $3 30 for $1, instead of $1 75 for $1. But the rate on that day has nothing to do with the case. The question is, what were the rates when the money was paid in. Upon making an approximate calculation—for it is needless to incur the labor of an exact one—it will be found that the amount fixed by the act of 1816 was the true aggregate value of the certificates according to the scale fixed by the resolution on the days when issued. A similar calculation shows that the several amounts so ascertained averaged due from July 3, 1778, thus corroborating the correctness of the assumed mode of computation.

JNO. D. McPHERSON,
Deputy Solictor.

IN THE COURT OF CLAIMS.

NANCY D. HOLKAR, ADMINISTRATRIX OF JOHN HOLKAR, DECEASED, *vs.* THE UNITED STATES.

February, A. D. 1859.—SCARBURGH, J., delivered the opinion of the court.

An act of Congress, approved April 29, A. D. 1816, (6 Stat. at L., p. 175,) provided as follows: "That the accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle the account of John Holkar, formerly consul general of France to the United States, for thirty-seven loan office certificates, amounting to twenty-one thousand seven hundred dollars nominal, that is to say, three hundred dollars thereof issued from the loan office of New Hampshire; seven thousand nine hundred dollars thereof issued from the loan office of Massachusetts; eight hundred dollars thereof issued from the loan office of Rhode Island; twelve hundred dollars thereof issued from the loan office of New York; and eleven thousand five hundred dollars thereof issued from the loan office of Georgia; all of which had been signed by Francis Hopkinson, Treasurer of Loans, and countersigned by the loan officers of the States, respectively, and which were destoyed by fire in the consulate office at Philadelphia, on the second day of January, in the year one thousand seven hundred and eighty; and that the specie value thereof being five thousand eight hundred and three dollars thirty-five ninetieths, be paid, with interest thereon at six per cent. from the third day of July, one thousand seven hundred and seventy-eight, being the mean date of interest on the same as examined and stated in the office of the Auditor of the Treasury on the twenty-fifth day of October, one thousand seven hundred and ninety-four, to the said John Holkar, out of any moneys in the treasury not otherwise appropriated, upon the said John Holkar giving a bond of indemnity to the satisfaction of the Comptroller of the Treasury of the United States."

The above-mentioned sum of *five thousand eight hundred and three thirty-five ninetieths dollars*, with interest thereon at six *per cent.* from the 3d day of July, A. D. 1778, till the 29th day of April, A. D. 1816, making the sum of *eighteen thousand nine hundred and seventy-three ninety-three one hundredths dollars*, was paid to the petitioner's intestate, John Holkar, on the 2d day of May, A. D. 1816.

The petitioner complains that injustice was done her intestate by this act of Congress in the mode of ascertaining the specie value of his loan office certificates. She insists that the mean date of the certificates was thereby determined to be the 3d day of July, A. D. 1778, and that on that day, under the resolution of Congress of the 28th day of June, A. D. 1780, the depreciation being only at the rate of one dollar and three-quarters of a dollar of the certificates for one Spanish milled dollar, their specie value was $12,400 instead of $5,803.

But the petitioner has fallen into an error in supposing that, under the resolution of congress above mentioned, the depreciation of loan office certificates was, on the 3d day of July, A. D. 1778, at the rate on which she insists. Moreover, the 3d day of July, A. D. 1778, was fixed as the day on which interest should commence, and not as the day on which the specie value of the certificates should be ascertained.

The resolution of the 28th day of June, A. D. 1780, is as follows: "Whereas Congress on the 18th day of April last, resolved in the words following, viz: that Congress will, as soon as may be, make such provision for discharging or continuing the loans that have been made to these United States on loan office certificates, so as that the

holders of them shall sustain no loss thereon by any depreciation of the bills loaned subsequent to the respective dates of the said certificates; therefore,

"*Resolved*, That the principal of all loans that have been made to these United States shall finally be discharged by paying the full current value of the bills when loaned, which payments shall be made in Spanish milled dollars, or the current exchange thereof in other money at the time of payment.

"That the value of the bills when loaned shall be ascertained for the purpose above-mentioned, by computing thereon a progressive rule of depreciation, commencing with the 1st day of September, 1777, and continuing to the 18th day of March, 1780, in geometrical proportion to the time, from period to period, as hereafter stated, assuming the depreciation at the several periods to be as follows, viz:

"On the 1st day of March, 1778, one dollar and three-quarters of a dollar of the said bills for one Spanish milled dollar: on the 1st of September, 1778, as four of the former for one of the latter; on the 1st of March, 1779, as ten of the former for one of the latter; on the 1st day of September, 1779, as eighteen of the former for one of the latter; and on the 18th day of March, 1780, as forty of the former for one of the latter.

"That the principal of all certificates that have been taken out since the 18th day of March last, shall be discharged at the rate of one Spanish milled dollar, or the current exchange thereof in other money at the time of payment, for forty dollars of the said bills of credit received on loan.

* * * * * * *

"*Ordered*, That the board of treasury prepare the proper tables for direction of the commissioners of the continental loan offices in the several States in paying off the principal and interest of loans, agreeably to the foregoing resolutions."—(3 *Journals of Congress*, *p.* 473–'4.)

The board of treasury prepared the tables, and a copy of them has been furnished in this case. The order requiring them shows that the construction of the resolution insisted upon by the petitioner is erroneous; for if that were the true construction, the tables would not have been necessary. But the rule of depreciation established by the resolution was *progressive*, commencing with the 1st day of September, A. D. 1777, and continuing to the 18th day of March, A. D. 1780, in *geometrical* proportion to the time, from period to period as therein stated, assuming the depreciation at the several periods to be as therein declared. Hence it is plain that, although the depreciation on the 1st day of March, A. D. 1778, was one dollar and three-quarters of a dollar of the certificates for one Spanish milled dollar, yet it did not continue at that rate till the 1st day September, A. D. 1778. The depreciation on the 1st day of March, A. D. 1778, *progressed* from that day in *geometrical* proportion to the 1st day of September, A. D. 1778, in such manner as to reach on the day last mentioned the rate of four dollars of certificates for one Spanish milled dollar. The tables prepared by the board of treasury show this *progression* on each intermediate day. No wrong, therefore, was done

the petitioner's intestate, unless the specie value of his certificates calculated in this manner was greater than the amount of principal which was paid to him.

We submit the following rough statements in illustration of our views. We have not made them precisely accurate, but they are sufficiently so for the purposes of this case.

The first period mentioned in the resolution commenced on the 1st day of September, A. D. 1777, and ended on the 1st day of March, A. D. 1778. We find the depreciation on the first days of the several intermediate months by making a geometrical series, of which the first term is one, the last 1.75, and the number of terms seven. The ratio of such a series would be about 1.11, producing results as follows:

1777,	September 1st	1.00
	October 1st	1.10
	November 1st	1.21
	December 1st	1.33
1778,	January 1st	1.46
	February 1st	1.61
	March 1st	1.77—excess, two cents.

The second period extended to the 1st day of September, A. D. 1778. By the same method of calculation, the ratio would be about 1.15, producing results as follows:

1778,	March 1st	1.75
	April 1st	2.01
	May 1st	2.31
	June 1st	2.66
	July 1st	3.04
	August 1st	3.49
	September 1st	4.01—excess of one cent.

The third period extended to the 1st day of March, A. D. 1779. By the same method of calculation, the ratio is about 1.165, producing results as follows:

1778,	September 1st	4.00
	October 1st	4.66
	November 1st	5.43
	December 1st	6.32
1779,	January 1st	7.36
	February 1st	8.58
	March 1st	10.00

The petitioner's intestate's certificates were, severally, of the dates and amounts, (see American State Papers, Claims, p. 268,) and, according to the foregoing method of calculation, of the specie value, following:

Date.	Amount.	Rate of depreciation.	Specie value.
July 2, A. D. 1777	$300	Par.	$300
October 31, A. D. 1777	300	1. 21	248
January 1, A. D. 1778	300	1. 46	205
March 13, A. D. 1778	1, 200	1. 86	645
May 21, A. D. 1778	300	2. 55	113
July 25, A. D. 1778	800	3. 41	234
August 11, A. D. 1778	7, 000	3. 68	1, 902
October 28, A. D. 1778	2, 000	5. 37	372
November 1, A. D. 1778	9, 500	5. 43	1, 749
Total nominal value	21, 700	Total specie value	5, 768
Amount paid the petitioner's intestate under the act of Congress			5, 803
The difference			35

This difference resulted from the trifling inaccuracy of the above calculations, which, nevertheless, show very satisfactorily that the petitioner's intestate was allowed the full specie value of his certificates.

The following is a statement of the specie value of those certificates, made out in conformity to the tables prepared by the board of treasury:

Date.	Nominal amount.	Specie value.		
			90ths.	8ths.
July 2, A. D. 1777	$300	$300	00	0
October 31, A. D. 1777	300	249	18	0
January 1, A. D. 1778	300	205	66	0
March 13, A. D. 1778	1, 200	549	64	4
May 21, A. D. 1778	300	119	11	5
July 25, A. D. 1778	800	237	20	0
August 11, A. D. 1778	7, 000	1, 923	05	0
October 28, A. D. 1778	2, 000	374	60	0
November 1, A. D. 1778	9, 500	1, 743	81	7
Total	21, 700	5, 802	57	0

The difference between the specie value of the certificates ascertained by this statement and that actually allowed the petitioner's intestate by the act of Congress is only sixty-eight ninetieths of a dollar.

Our opinion is that the petitioner is not entitled to relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 203.

H. J. ANDERSON, ADMINISTRATOR OF ELBERT ANDERSON.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

H. J. ANDERSON, ADMINISTRATOR OF ELBERT ANDERSON, *vs.* THE UNITED STATES.

1. The petition the of claimant.
2. Depositions and other documents in support of the claim, with exhibits numbered from 1 to 25, transmitted to the House of Representatives, excepting 1, 2, 5 and 8, being account and letter books, are retained in the clerk's office, subject to the order of Congress:
3. Copies of letters read in evidence by the Solicitor of the United States, and transmitted to the House of Representatives.
4. Solicitor's brief on the law and facts, Nos. 1 and 2.
5. Claimant's brief.
6. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 5th day of December, A. D. 1859.

SAMUEL H. HUNTINGTON.
Chief Clerk Court Claims.

THE UNITED STATES COURT OF CLAIMS

HENRY JAS. ANDERSON, administrator of ELBERT ANDERSON, deceased, *against* THE UNITED STATES.

The petition of the above named claimant respectfully shows to this court:

That the above named Elbert Anderson, deceased, was, during the years 1812–'13 and '14, contractor for the subsistence of the army of the United States. That the said Elbert Anderson, deceased, entered

into two several contracts and agreements supplementary thereto with the United States, dated respectively the 7th of November, 1811, and the 25th day of February, 1813; copies of which are hereunto annexed, marked A and B. That under the said contracts the said Elbert Anderson, deceased, made certain claims against the United States, hereinafter more particularly specified, being partly for amounts actually due him by the terms of the said contract, partly by way of compensation for articles furnished and services rendered beyond the requisitions of the said contracts, and partly by way of indemnity or compensation for alleged breaches of the covenants therein contained by the United States. And this claimant further shows, that he is the sole legal representative of the said Elbert Anderson, deceased, and that the said claims are now owned by the following parties, to wit: Theodore A. Bailey, administrator of Theodorus Bailey, deceased, of two-eighths, which said two-eighths were owned by the said Theodorus Bailey, as having been interested to the extent of two-eighths in the execution of the said contracts; James Thorne, of one-eighth of the claims arising under the contract of 1813, as having been interested to the extent of one-eighth in the execution of the said contract; Thomas Lord, the son-in-law of the said Elbert Anderson, deceased, of two-eighths of the claims arising under both contracts, which said two-eighths were transferred to him by the said Elbert Anderson, deceased, and Henry James Anderson, administrator of Elbert Anderson, deceased, of four-eighths of the claims arising under the first contract, and three-eighths of those arising under the second contract, these being the proportions of the said claims owned by the said Elbert Anderson at the time of his decease. That the above named parties are the only persons interested in or owning any portion of the said claims. That an account of the said claims, with some others, was rendered to Peter Hagner, the Third Auditor of the War Department, on the 12th day of August, 1823, and on the 16th day of June, 1824; and that the said Peter Hagner reported adversely to the same; and that his reasons for so reporting are stated at length in a letter written by the said Peter Hagner, dated the 9th of February, 1825, and addressed to the Committee on Claims of the House of Representatives. That the claims were thereupon referred to Richard Cutts, the Second Comptroller, and that the said Richard Cutts allowed two claims not referred to in this petition, and confirmed the report of the Third Auditor as to others, and referred others to the action of Congress. That the report of the said Richard Cutts is dated the 16th day of July, 1824.

That a number of the said claims were then referred to the Secretary of War, and that he reported adversely to some of the same, and referred others to the action of Congress. That the said report is dated the 12th day of August, 1824.

That the said claims, with some others, have been presented to Congress at various times, and that the reports made by the Committee on Claims on the said claims are dated 10th March, 1826, 2d and 18th February, 1831, 5th May, 1832, and 13th December, 1833, 4th February, 1839, and 10th July, 1840, and may be seen in the volumes of reports of committees of the House of Representatives—Reports No. 57, 2d session 21st Congress; No. 465, 1st session 22d Congress; No. 27,

1st session 23d Congress; No. 152, 3d session 25th Congress; No. 692, 1st session 26th Congress, and that the above reports were adverse to the claims presented by this petition, and that since the last above mentioned date, the said claims have never been presented to Congress. And this claimant further shows, that the follwing is a list of the claims which he makes by this petition:

1st. (*a.*) That by the terms of said contract dated the 7th November, 1811, the said Elbert Anderson, deceased, agreed with the United States to furnish provisions for the army of the United States in and adjacent to the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specifically enumerated in the said contract. That the said contractor, in addition to the said provisions, did furnish to the United States a large number of casks and packages, boxes and barrels, wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor. That the value of the said casks and packages so furnished and retained by the United States was $13,972 30.

That by the universal practice of the United States under previous contracts, and by the various cotemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor.

That the United States have never allowed the said contractor any compensation for the casks, etc., so furnished to and used by them; and this claimant therefore asks compensation and indemnity of the United States in the said sum of $13,972 30, together with interest on the same from the date at which the claim accrued.

(*b.*) That by the terms of the said contract dated the 25th of February, 1813, the said Elbert Anderson, deceased, contracted in like manner with the United States to furnish provisions to the army of the United States in and adjacent to the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specified in the said contract. That in addition to the said rations the said contractor did furnish to the United States a large amount of casks and packages, &c., wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor, and that the value of the casks and packages so furnished to and retained by the United States was $10,921 90, and this claimant therefore asks compensation and indemnity of the United States in the sum of $10,921 90, together with interest from the date at which the said claim accrued.

(*c.*) That the terms of the said contract, dated the 25th day of February, 1813, to wit, by the sixth article thereof, the United States undertook and agreed as follows, to wit: "That all losses sustained by the depredations of an enemy or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be

paid for at the contract price of the rations or the component parts, and at an appraised value of the other articles, on the deposition of one or more credible characters, and the certificate of a commissioned officer when the same can be obtained, ascertaining the circumstances of the loss and the amount of the articles for which compensation is claimed." That during the execution of the said contract, casks and packages containing the rations to be issued to the troops were lost or destroyed to the amount in value of $4,805 86. That $1,901 12 of the said casks and packages were captured and destroyed by the enemy, and $2,904 75 of the said casks and packages were lost and destroyed by the troops of the United States in descending the St. Lawrence. That the said casks and packages were property necessarily used in transporting the said provisions, and that the said contractor has never received any compensation for the loss of the same. Wherefore this claimant asks compensation of the United States in the said sum of $4,805 86, together with interest on the same from the date at which the said claim accrued.

2d. That by the terms of both the above-mentioned contracts, to wit, by the tenth article of the same, the United States undertook and agreed as follows:

"And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors or administrators, be found to be due to them on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid, and that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors or administrators." That during the months of July and August, 1814, the said contractor transmitted to Washington his accounts for rations issued under the aforesaid contracts; that by the said accounts he was then largely in advance to the United States, to wit, in a sum exceeding $200,000. That on the 15th October, 1814, he transmitted to Washington a further account, showing a balance due him by the United States of $263,004 55½. That during the months of July, August, September and October, the United States refused or neglected to settle the said accounts so transmitted, and that the said delay in settling the accounts of the said contractor was unnecessary and unreasonable. That when the said accounts were finally settled, the balances due to the said contractor as aforesaid were found to be correct, and were paid to an amount exceeding $200,000. That on the 27th day of October, 1814, the said contractor made two several drafts on James Monroe, the Secretary of War, as by the terms and usage of his contract he was authorized to do, the one for $150,000 payable at sight, and the other for $50,000 at fifteen days' date. That the said bills were not honored or paid by the United Strtes as they should have been, but were returned protested for non-payment. That the said Elbert Anderson was thereby subjected to great loss, and that his credit was much impaired, and that he claimed of the United States the usual per centage of damages allowed by the law merchant, and by the practice of the United States in the case of protested bills; and that the United States have refused to allow the same; wherefore the

claimant asks that the said damages be allowed him to the amount of 10 per cent. on the amount of the drafts protested, that is to say, $20,000, together with interest on the same from the date at which the said claim accrued.

3d. (*a.*) That by the terms of the said contracts the United States undertook and agreed to pay for the said rations so furnished a certain price in money. That the contractor was compelled to wait ten months from the period at which his accounts were tendered for settlement before payment of the balances due by the said accounts was tendered to him, and that he was then compelled to receive the said payment in treasury notes, at the time of such receipt from 8 to 11 per cent. below par, and that he thereby suffered great loss, to wit, the sum of $6,237, being 11 per cent. on $56,700 received in treasury notes on the 5th day of September, 1815, at which date the said notes were 11 per cent. below par, and the sum of $15,977 20, being the discount at $8\frac{47}{100}$ per cent. on $188,631 71, received in treasury notes on the 16th day of January, 1816. That the said contractor never received any indemnity for the said loss, wherefore this claimant asks compensation of the United States in the sum of $22,214 20, together with interest on the same from the date at which the said claim accrued.

4th. (*a.*) That by the terms of the said contract, the said Elbert Anderson, deceased, undertook and agreed to furnish to the troops of the United States whiskey at a certain price, being one of the component parts of the rations to be furnished under the said contract. That Congress on the 24th day of July, 1813, passed a law laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. That the said law went into operation on the first day of January, 1814, and remained in operation throughout the whole remaining term of the said contract. That in consequence of the passage of the said law, the price of whiskey was enhanced to the amount of twenty cents on the gallon; and that the said enhanced price of whiskey continued from the date of the passage of the said law, to wit, the 24th day of July, 1813, throughout the whole term of the said contract. That from the said 24th day of July, 1813, up to the first day of January, 1814, the day on which the law went into operation, the said contractor furnished under his contract of 25th of February, 1813, 89,193 gallons of whiskey. That owing to the said enhanced price of whiskey, the contractor was compelled to pay $12,932 99 increased cost of the said whiskey, being 14½ cents a gallon for the amount of whiskey furnished as aforesaid.

(*b.*) That from the said the first day of January, 1814, up to the termination of his said contract, the said contractor furnished to the United States 226,045 gallons of whiskey; that owing to the price of whiskey enhanced as aforesaid, he was compelled to pay $32,776 52, the increased cost of the said whiskey being 14½ cents on the gallon for the amount furnished as aforesaid. That the said Elbert Anderson, deceased, claimed that he should be indemnified by the United States for the great loss so entailed upon him by the act of the United States, and that the United States have always refused or neglected so to indemnify him; wherefore this claimant asks compensation and

indemnity of the United States in the sum of $45,709 51, together with interest on the same from the date at which the said claim accrued.

5th. That by the terms of the said contract, to wit, by the second paragraph of the third article, the United States undertook and agreed as follows: "It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States." That under the said contract of 25th February, 1813, the said contractor was required to deliver a large amount of provisions at the mouth of the Genesee river. That while the said provisions were being transported in conformity with the said order, the contractor was required by the order of General Hull, the officer in command, to transport the said supplies to Williamsville, on the Niagara frontier. That in conformity with such order, the provisions were delivered at Williamsville, and that the expense of such transportation amounted to $12,303 37. That in accordance with the undertaking on the part of the United States above referred to, the said contractor claimed that the expense of such transportation should be borne by the United States, and that the United States have refused to allow him the expenses of such transportation; wherefore this claimant asks compensation and indemnity of the United States for the said sum of $12,303 37, together with interest on the same from the date at which the said claim accrued.

6th. That during the execution of the said contract of the 25th February, 1813, J. Thorne, one of the agents of the said contractor, was compelled, on the requisition of General Dearborn, to receive a large amount of provisions left in deposit by Augustus Porter, a contractor for the subsistence of the army, at the expiration of the contract of the said Porter, and also a large amount of provisions captured from the enemy. That the deposits so received consisted of rations of which the component parts were not in the proportions authorized by the contractor's contract, and that the captured provisions were moreover much damaged. That the receipt of the said provisions subjected the said contractor to a heavy loss, and that they were received by the said James Thorne without the knowledge, assent, or authority of the said contractor, and solely in consequence of the peremptory order of the commanding officer. That the said provisions contained, among other things, $306,338 flour rations; that the said flour was credited to the said Augustus Porter at five cents a ration, and subsequently charged to the contractor at seven and a half cents a ration. That the said contractor claimed an allowance of three cents a ration for the loss to which he was so subjected, and that the United States have refused to allow the same; wherefore, this claimant asks compensation and indemnity of the United States in the sum of $9,190 14, being three cents a ration on the said 306,338 rations, together with interest on the same from the date at which the said claim accrued.

7th. And this claimant further shows, that the said Elbert Anderson in conformity with the requisitions of his contract, dated 25th

February, 1813, during the month of September of that year, repaired, attended by a numerous and necessary train of assistants, to the northern frontier, in order to issue from deposits which he had made there, under requisitions from the War Department. That he there presented himself to General Wade Hampton, who stated an intention to supply the troops without resort to the petitioner or respect for his contract. That the said conduct of General Wade Hampton subjected the said contractor to a heavy expenditure as compensation for the assistants who had repaired with him to the northern frontier, and deprived him of the benefit of the issue of said provisions to which he was entitled by the terms of his said contract, and by the agreement supplementary thereto. That the said contractor offered to the War Department evidence of his having sustained, through General Hampton's violation of the said contract, damages exceeding $20,000. That the Department admitted the infraction, but, instead of examining the evidence, undertook and agreed to allow the said contractor as the measure of his damages 12½ per cent. on the amount of the deposits, the per centage allowed him by the third article of the agreement supplementary to his contract as wastage and leakage, and the one cent. per ration for issue, to which the fifth article of that agreement entitled him. That the contractor assented to this agreement, though aware that the damages so awarded would not equal the loss he had sustained. That the 12½ per cent. above referred to amounted to $9,843 75, and that the said sum was allowed him. That the one cent. per ration above referred to amounted to $4,500, and the said War Department refused to allow the said $4,500; wherefore this claimant asks compensation and indemnity of the United States in the said sum of $4,500, together with interest from the date at which the said claim accrued.

8th. That under the said contract of 25th February, 1813, the said Elbert Anderson, deceased, received a large quantity of provisions from the stores which had been accumulated in the neighborhood of Sackett's Harbor, for the purpose of providing the troops with provisions during their descent down the St. Lawrence. That by the third and fifth articles of the agreement supplementary to the said contract, the said contractor was entitled to 12½ per cent. leakage and wastage on the gross amount of deposits thus received, and one cent per ration for the expense and trouble of issuing the same. That the gross amount of perquisites on the provisions received during the descent of the St. Lawrence was $10,273 40. That a large portion of the provisions during the said descent of the St. Lawrence were lost or destroyed, for which the said contractor received compensation. That the perquisites on the provisions so destroyed amounted to $4,523 71.

That after deducting the said $4,523 71 from the $10,273 40, there still remained due the sum of $5,749 69 as perquisites on provisions actually received by the said contractor, and by his agent issued to the troops. That the said contractor claimed the allowance of the $5,749 69, but that the United States refused to allow the same; wherefore this claimant asks compensation and indemnity of the United States in the said sum of $5,749 69, together with interest on the same from the date at which the said claim became due.

And this claimant further shows, that the various claims herein enumerated amount in the aggregate to the sum of $149,366 97; wherefore this claimant asks compensation and indemnity of the United States in the said sum of $149,366 97, together with interest from the date whereon each claim accrued, and this claimant prays leave to refer to the documents hereafter to be submitted, for a more detailed statement of the facts and merits of each individual claim.

HENRY JAS. ANDERSON,
Administrator of Elbert Anderson, deceased.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry Jas. Anderson, the above named claimant, being duly sworn, says: That he has heard read the foregeing petition, and that the facts therein stated are true, to the best of his knowledge, information, and belief.

HENRY JAS. ANDERSON.

Sworn before me this 22d day of May, 1855.

WM. MITCHELL,
Justice Supreme Court.

CHAS. P. DALY,
MAY 23, 1855. *Judge of the New York Common Pleas.*

STATE OF NEW YORK, *City and county of New York, ss:*

I Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that William Mitchell, before whom the annexed deposition was taken, was, at the time of taking the same, a justice of the supreme court for the said city and county, duly elected and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 23d day of May, 1855.

RICHARD B. CONNOLLY, *Clerk.*

[Seal of court and county.]

STATE OF NEW YORK, *city and county of New York, ss:*

I Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, do hereby certify that Chas. P. Daly, before whom the annexed deposition was taken, was, at the time of taking the same, judge of the court of common pleas for said city and county, duly elected and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, the 23d day of May, 1855.

RICHD. B. CONNOLLY, *Clerk.*

[Seal of court and county]

A.

Contract dated 7th November, 1811, to take effect on the 1st day of June, 1812, and terminate on the 31st day of May, 1813; and supplementary agreement for the issue of rations from deposits made under this contract.

ARTICLES OF AGREEMENT made on the 7th day of November, anno Domini one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, junior, of the city of New York, of the other part.

This agreement witnesseth, That the said William Eustis, for and on behalf of the United States of America, and the said Elbert Anderson, junior, his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other as follows, viz:

First. That the said Elbert Anderson, junior, his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched or recruited, within the limits of the State of New York (Niagara and its dependencies excepted) and the State of New Jersey, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first day of May, eighteen hundred and thirteen, at the following prices: that is to say, at any place where rations shall be issued within the city and harbor of New York, for thirteen cents five mills per ration; within all other parts of the State of New York, at fourteen cents per ration, and within the State of New Jersey, for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof sall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fourteen cents, the component parts thereof shall be, for meat five cents five mills, flour or bread four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

Second. That the ration to be furnished and delivered by virtue of this contract shall consist of the following articles, viz: one pound and a quarter of beef, or three-quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or officer

commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued, by general orders to be promulgated a reasonable time before the issue is to commence; that, in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the States of New York and New Jersey aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, junior, when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States, stationed in the harbor of New York, an equivalent in good malt liquor or light wines, at such season of the year as, in the opinion of the President of the United States, may be necessary for the preservation of their health.

It is understood that if the contractors hall be required to deposit provisions at one place or post, and shall afterwards be required to move them, to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever, and as often as the provisions stipulated to be furnished under this contract shall, in the opinion of the commanding officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, or his agent, and in case of disagreement a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, junior, or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions, under oath, with power to condemn as aforesaid; and all provisions condemned by such survey may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jr., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy,

or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards, for the safety of the provisions and for the protecting of the cattle against an enemy, shall be furnished whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service; and that the said Elbert Anderson, jr., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper storehouses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time, at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the States above mentioned may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jr., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum, from the time of such expiration, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors or administrators, be found to be due to him or them on account of the rations which shall be supplied, pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors, or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefits to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and the said Elbert Anderson, junior, hath hereto set his hand and seal the day and year first above written.

W. EUSTIS.

[SEAL U. S.] ELBERT ANDERSON, JR.

[L. S. E. A.]

Signed, sealed, and delivered in the presence of—
DANIEL PARKER,
JOHN J. ABERT.

A true copy from the original.

Whereas by a certain agreement made on the seventh day of November, 1811, between W. Eustis, Secretary of War, and Elbert Anderson, jr., of the State of New York, it was stipulated that the deposits of three, &c., months' supplies of rations may be required. Now therefore it is agreed, by the order of the said W. Eustis to Major General H. Dearborn, that when issues are required from the public deposits, that he might call on the said Elbert for that purpose.

First. That an inventory shall be taken as soon as possible, which shall compromise all such supplies as shall have been actually delivered on or before the last of May, 1813, next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post and the party of the second part of this agreement or his agent, and duplicate receipts given therefor by the said party of the second part or his agent, expressing the quantity and quality of each article or delivery to be made by the public storekeepers or other agents who have charge of the deposits.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz:

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whiskey.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay, or cause to be paid, to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said H. Dearborn, in behalf of the Secretary

of War on behalf of the United States, hath hereunto subscribed his name and affixed his seal ; and the said Elbert hath hereunto set his hand and seal, the day and year last above written.

H. DEARBORN, [L. S. H. D.]
ELBERT ANDERSON. [L. S. E. A.]

Signed, sealed, and delivered in the presence of—

A true copy from the original.

B.

Contract dated 25th February, 1813, to take effect on the 1st day of June, 1813, and terminate on the 31st day of May, 1814; and supplementary agreement for the issue of rations from deposits made under this contract.

ARTICLES OF AGREEMENT made on the twenty-fifth day of February, anno Domini one thousand eight hundred and thirteen, between John Armstrong, Secretary for the Department of War of the United States of America, of one part, and Elbert Anderson, junior, of the city of New York, of the other part.

This agreement witnesseth, That the said John Armstrong, for and on behalf of the United States of America, and the said Elbert Anderson, jun., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz:

First. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, and the western and northern vicinity, within the Canadas, thirty days' notice being given of the post or place where rations may be wanted, the number of troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive, at the following prices ; that is to say, at any place where rations shall be issued, within the city and harbor of New York, and at the encampment of Greenbush, at fourteen cents eight mills the ration. At all other places within the State of New York and the Canadas, at seventeen cents five mills per ration ; provided, however, that for all rations required within the enemy's territory, the price of the ration shall be augmented in propertion to the expense of transportation and issue in the enemy's country, the supplies having been delivered on account of government at magazines designated for that purpose within the State of New York ; and when it may become necessary, the public agents, boats and teams shall be employed in transporting from such depots by order of the commanding general, on representation of the contractor or his proper agent, that such transportation cannot be furnished independently of the army assistance: Provided, also, that the contractor shall at all times have

reasonable notice when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat, five cents five mills; for bread or flour, four cents eight mills; liquor, three cents five mills; small parts one cent. Where the price of the ration is seventeen cents five mills, the prices of the component parts of the same shall be, for meat, five cents five mills; bread or flour, seven cents five mills; liquor, three cents five mills; small parts one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles; twelve cents five mills per pound for soap; four cents five mills per quart for vinegar; and two cents five mills per quart for salt: Provided, also, that the thirty days' notice required to be given by the government of the post or place where rations may be wanted, shall be understood to apply when the ration shall be taken from any deposit previously made on account of the government.

Second. That the ration to be furnished and delivered by virtue of this contract shall consist of the following articles, viz: one pound and a quarter of beef, or three quarters of a pound of pork; eighteen ounces of bread, or flour; one gill of rum, whiskey, or brandy; and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the articles of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the limits aforesaid, upon the requisition of the commandant of the army, or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration.

It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them, to be delivered at any other place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipuated to be furnished under this contract shall, in the opinion of the commanding officer of the post or place where they are offered, to

be issued be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer and the other by the said Elbert Anderson, jun., or his agent, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jun., or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions under oath, with power to condemn as aforesaid. And all provisions condemned by such survey or inspection may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jun., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished, whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service; and that the said Elbert Anderson, jun., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper storehouses shall be provided on behalf of the public for the reception and safe-keeping of the provisions deposited from time to time at such posts, respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War for settlement at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, jun., his executors or administrators, for and on account of the supplies to be furnished pursuant to this contract,

and all such sums of money as the commanding officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jun., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum from the time of such expiration, until the same shall be actually repaid. And that, if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States shall be given to the settlement of the accounts of said Elbert Anderson, jun., his heirs, executors, or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and [Seal of the War Office.] the said Elbert Anderson hath hereto set his hand and seal, the day and year first above written.

JOHN ARMSTRONG.
ELBERT ANDERSON, JUN.

Signed, sealed, and delivered in the presence of—
DANIEL PARKER.
GEORGE BOYD.

Whereas by a certain agreement made on the twenty-fifth day of February, eighteen hundred and thirteen, between John Armstrong, Secretary of War, and Elbert Anderson, jun., of the State of New York, it is stipulated that magazines of provisions may be required of the said Anderson, for the armies and troops of the United States: Now, therefore, it is agreed between the said John Armstrong and Elbert Anderson, junior:

First. That whenever deposits are ordered and have been made accordingly, an inspection shall be had, and an inventory shall be taken as soon as practicable, which shall comprise all such supplies as shall have been actually deposited for the United States by virtue of the said agreement, and a certificate of such inspection and inventory furnished to the said Elbert Anderson, jun., or his agent.

Second. That when issues are to be made from said deposits, the said Anderson, or his agent, shall be called on for that purpose, and duplicate receipts given therefor by the said party of the second part or his agent, expressing the quantity and quality of each article.

Third. That the party of the second part shall account to the

United States for all the supplies which shall be receipted for, as in the preceding article; he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz:

Eighteen ounces of bread or flour; one pound and a quarter of beef, or three-quarters of a pound of pork; one gill of rum, brandy, or whisky; and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles, to every hundred rations.

Fifth. That the said party of the first part shall pay, or cause to be paid, to the said party of the second part, one cent of every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same, the transportation being furnished by the government when the same may become necessary, and always at the public expense within the enemy's country.

In witness whereof, the said Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and [Seal of the War Office.] affixed the seal of the War Office of the United States; and the said Elbert Anderson hath hereunto set his hand and seal, the day and year last above written.

JOHN ARMSTRONG.
ELBERT ANDERSON, JUN.

Signed, sealed, and delivered in the presence of—
DANIEL PARKER.
GEORGE BOYD.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES.

STATE OF NEW YORK, *City and county of New York, ss*:

On the twenty-sixth of September, the third, ninth, sixteenth, twenty-ninth, and thirtieth of October, the seventh and twenty-seventh of November, A. D. 1856, the thirteenth, fourteenth, seventeenth, and twentieth of January, A. D. 1857, personally came Robert M. Penoyer, David H. Nevins, Hugh McGinnis, Joseph H. Choate, Jacob Barker, Roderick Sedgwick, James W. Bleecker, Reuben W. Folger, Henry James Anderson, Elbert Ellery Anderson, Francis Denham, Thomas Lord, Elbert J. Anderson, and John W. Martin, respectively, the several witnesses within named, and after having been respectively first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions respectively were written down by the commissioner, and then proposed by him to the witnesses respectively at the several dates therein respectively stated, and the answers thereto

were written down by the commissioner in the presence of the witnesses respectively who subscribed the depositions respectively in the presence of the commissioner, on the dates therein respectively stated. The depositions of Robert M. Penoyer, David H. Nevins, Hugh McGinnis, Joseph H. Choate, Jacob Barker, Roderick Sedgwick, James W. Bleecker, Reuben W. Folger, Henry James Anderson, Elbert Ellery Anderson, Francis Denham, Thomas Lord, Elbert J. Anderson, and John W. Martin, taken at the request of the said Ellery Anderson, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Henry James Anderson, administrator of the estate of Elbert Anderson, deceased. The solicitor for the United States signed the annexed consent, did not attend, but furnished cross-interrogatories, as stated in the depositions respectively. No objections were made.

G. R. J. BOWDOIN,
Commissioner.

NEW YORK, *January* 31, 1857.

Commissioner's fees—per day.

195 days, at 20 cents	$39 00
23 days' allowance, at $5	115 00
	150 00

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I hereby consent that the claimant may proceed before George R. J. Bowdoin, one of the commissioners of this court, with the examination of witnesses, subject to my right to propound cross-interrogatories within a reasonable time.

M. BLAIR,
United States Solicitor.

WASHINGTON, *September* 1, 1856.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Robert M. Penoyer, a witness produced on the part of the above-named claimant in the above-entitled action, this twenty-sixth day of September, eighteen hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this cause? Are you related to the claimant, and if yea, in what degree?

Answer. My name is Robert M. Penoyer; I am a flour dealer, and

am seventy years of age; have resided in New York city for the past year; I have no interest, direct or indirect, in the claim which is the subject of inquiry in this cause, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you acquainted with Elbert Anderson, deceased, of New York city?

Answer. Yes, sir.

Third interrogatory. What was his occupation from eighteen hundred and eleven to eighteen hundred and fifteen?

Answer. He was an army contractor, issuing provisions to the United States troops.

Fourth interrogatory. What was the nature of your connexion with him during that period or any part of it?

Answer. I kept the accounts under him, commencing in the year 1813; I mean the regular abstracts that came into the office from the points or posts where the provisions were issued to the troops; also the abstracts of provisions deposited and received out of deposit.

Fifth interrogatory. In whose handwriting are the books now exhibited to you, and marked respectively No. 1 and No. 2?

Answer. Exhibit No. 1 is in my handwriting, with the exception of pages numbered 151, 152, and 154, respectively. Exhibit No. 2 is in my handwriting, except page numbered 63.

Sixth interrogatory. What do these two exhibits contain?

Answer. They contain copies of abstracts sent on to Washington; these abstracts are the abstracts referred to in my answer to the fourth interrogatory.

Seventh interrogatory. What is the account set forth on page 58, (fifty-eight,) in exhibit No. 2?

Answer. It is a copy of the account current between Elbert Anderson, deceased, and the United States; it is brought down to October 15, 1814.

Eighth interrogatory. Do the first four items debited to the United States consist of accounts of issues made under the contract, dated the 25th of February, 1813, and set forth at length, commencing at page number 66 (sixty-six) of exhibit No. 1 and ending on page numbered 120 (one hundred and twenty) of same exhibit?

Answer. Yes, sir.

Ninth interrogatory. Does the fifth item in said account current debited to the United States consist of accounts set forth at pages numbered 121, 122, and 123 of exhibit No. 1, and pages numbered 54 to 57, both inclusive, of exhibit No. 2?

Answer. Yes, sir.

Tenth interrogatory. Does the sixth item in said account current consist of accounts of deposit, set forth at pages 139 and 140, 141 and 142 of exhibit number 1?

Answer. Yes, sir.

Eleventh interrogatory. Do the four credits made to the United States in the said account current, for provisions received out of deposit, appear set forth at length on pages 143 to 148, both inclusive, of exhibit No. 1?

Answer. Yes, sir.

The further examination of this witness was adjourned to September 29, at four o'clock p. m.

September 29. The further examination of this witness was resumed.

Twelfth interrogatory. Do the abstracts exhibited at pages 127, 128, and 129 of exhibit No. 1, and the abstract at page 136 of same exhibit, referring to the contract of the 7th of November, 1811, show respectively the amounts of provisions deposited and received out of deposit under the said contract?

Answer. Yes, sir.

Thirteenth interrogatory. Is the computation made at pages 86 and 87 of exhibit No. 2, whereby it appears that the value of the casks and packages containing provisions deposited, furnished to the United States, was forty-six thousand five hundred and eighty-four dollars and twenty-one cents, and that the value of the casks and packages was twenty-one thousand six hundred and ninety dollars and one cent, and that a balance of casks and packages of the value of twenty-four thousand eight hundred and ninety-four dollars and twenty cents was furnished to the United States and not received back, a computation based upon the abstracts above referred to, and set forth at pages 127, 128, 129, 139, 140, 141, 142, 136, and 143 to 148, both inclusive, of exhibit No. 1?

Answer. Yes, sir.

Fourteenth interrogatory. Are the said casks and packages charged and credited at the following rates: meat barrels, one dollar; liquor casks from one dollar and fifty cents to three dollars; flour barrels, thirty-eight cents; boxes, twenty-five cents?

Answer. The meat barrels are charged and credited at one dollar; the whiskey barrels at one dollar; liquor casks at three dollars; these casks vary in price according to size; the flour barrels at thirty-eight cents; boxes at twenty-five cents.

Fifteenth interrogatory. What is the paper now shown you, marked "Exhibit No. 3," in whose handwriting is the same, and what account does it refer to?

Answer. It is an account made out by John Abbott, an accountant in the War Department, at Washington, showing the differences under the contract of the 25th of February, 1813; it is in Mr. Abbott's handwriting, and refers to the account current on page 58, of exhibit No. 2.

Sixteenth interrogatory. Does it appear from "Exhibit No. 3," that any portion, and if any what, of the abstracts of provisions deposited and received out of deposit were disallowed by the accounting officer at Washington?

Answer. I do not see that it does, so far as I am able to judge, except the separate charge of casks and packages.

The further examination of this witness was adjourned to October, 1, at half-past three o'clock, p. m.

October 1. The further examination of this witness was resumed.

Seventeenth interrogatory. Have you since the sixteenth interrogatory was answered by you, made any further examination of the statement of differences, marked "Exhibit No. 3," so as to enable you to

answer the said interrogatory more definitely, and if yea, answer the sixteenth interrogatory again?

Answer. I have since then examined "Exhibit No. 3," more carefully, and I do not find that it disallows any of the abstracts of provisions deposited or received out of deposit.

Eighteenth interrogatory. What was the practice of Elbert Anderson, deceased, under his contract of 25th February, 1813, with reference to drafts drawn on the Secretary of War in payment of sums accruing to him under the said contract?

Answer. He used to draw thirty days after the abstracts were forwarded for the amounts appearing to be due, or predicated on such amounts, but sometimes at a shorter and sometimes at a longer period.

Nineteenth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir. R. M. PENOYER.

Subscribed in my presence, October 1, 1856.

G. R. J. BOWDOIN,
Commissioner.

The examination of this witness was resumed this 26th day of November, 1856.

Twentieth interrogatory. Do you recognize the book now shown you marked "Exhibit No. 5," and of what does the same consist?

Answer. I do recognize it; it is the letter-book containing the letters of Elbert Anderson, relating to his contracts with the United States, most of which are in my handwriting, from page 184 to page 296, both inclusive, are entirely in my handwriting except page 223 and 224.

Twenty-first interrogatory. Do you know anything about two drafts mentioned in said "Exhibit No. 5," at page 288.

Answer. Yes, I know that the drafts referred to on that page were drawn, and that both of them were returned protested for non-acceptance; they were drawn and returned as mentioned on that page.

Twenty-second interrogatory. What was your custom with reference to entering on the copies of abstracts retained by Elbert Anderson, the dates at which the originals were forwarded to Washington?

Answer. It was generally my custom to note on the copies of such abstracts retained by Elbert Anderson the dates at which the originals were forwarded to the accountant's office at Washington.

Twenty-third interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. None that I recollect at present.

R. M. PENOYER.

Subscribed in my presence, November 26, 1856.

G. R. J. BOWDOIN,
Commissioner.

On cross-examination the said Robert M. Penoyer testified as follows:

First cross-interrogatory. What was the value of the casks spoken of in your testimony in chief at the places at which they were emptied? State your means of knowledge on the subject.

Answer. I do not know the value of the casks.

Second cross-interrogatory. If you mean in answer to the tirteenth interrogatory to say that casks of the value of twenty-one thousand six hundred and ninety dollars and one cent were returned to Anderson by the United States, state where, and what places.

Answer. I do not mean to say ; my answer to that interrogatory is only that certain computations were based upon certain abstracts.

Third cross-interrogatory. In answer to the eighthteenth interrogatory you say it was the practice of Mr. Anderson to draw on the department after furnishing his abstracts; were his drafts accepted when not specially authorized?

Answer. All the drafts drawn by Mr. Anderson were accepted by the department, with two exceptions; I do not know of any instance in which a special authority to draw was given. The drafts which Mr. Anderson drew are posted in the accounts current, which are contained in the abstract books, marked "Exhibits, Nos. 1 and 2."

Fourth cross-interrogatory. Do you know of any other matter relative to the claim in question? If yea, state it.

Answer. I do not at present recollect anything.

R. M. PENOYER.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator &c., of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES.

Deposition of David H. Nevins, a witness produced on the part of the above named claimant, in the above entitled action, this third day day of October, eighteen hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant, and if yea, in what degree?

Answer. My name is David H. Nevins ; I have no business at present ; I am forty-five years of age, and have resided for the past year in the city of New York ; I have no interest, direct or indirect, in the claim which is the subject of inquiry in this action ; and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Do you know of a firm known by the name of Butler & Nevins?

Answer. I know there was such a firm from conversation with Russell H. Nevins, now deceased, who told me that he was a member of that firm ; I think the other partner was Benjamin Butler, and I feel confident that he has been dead for several years ; I do not think there were any other partners ; I never heard of any ; their business was that of brokers ; they were in business, as I have been informed, and

believe, in the years 1814, 1815, and 1816. Russell H. Nevins was my uncle.

Third interrogatory. Have you in your possession any of the books of account or of the correspondence of the said late firm of Butler & Nevins?

Answer. I have brought with me two books, which were letter-books of Butler & Nevins, and Russell H. Nevins; these books contain letters to correspondents, giving, among other things, quotations of stocks, treasury notes, exchange, and specie.

Fourth interrogatory. Will you consent that the said letter-books be transmitted to Washington as "Exhibits," in this action?

Answer. No, sir.

Fifth interrogatory. What appears in the said letter-book marked No. 1, under the dates of August 31, 1815, September 9, 1815, September 13, 1815, September 15, 1815, and September 21, 1815, to be the quotations of seven per cent. treasury notes, and of dollars, and gold, at those dates respectively?

Answer. On the 31st of August, 1815, the notes are quoted 1¼ (one and a quarter) premium; dollars, nine to ten premium; gold, ten to eleven premium; on the 9th of September, the notes are quoted at between one and one and three quarters premium; dollars and gold from twelve to thirteen premium; on the 15th of September, the notes are quoted at three to three and a quarter premium; dollars and gold from fourteen to fifteen premium; on the 21st of September, the notes are quoted at from two and three quarters to three premium; dollars, fourteen premium; gold not quoted, except doubloons, which are quoted as being of the value of eighteen dollars each.

Sixth interrogatory. What appears in the said letter-book marked No. 2, under the dates of January 2, 1816, January 4, 1816, January 6, 1816, January 9, 1816, January 16, 1816, January 23, 1816, and January 24, 1816, to be the quotations of treasury notes, and of dollars, and gold, at those dates respectively?

Answer. Under date of January second, the seven per cent. treasury notes are quoted at par; gold, nine to ten premium; dollars, not quoted. Under date of January fourth, specie is quoted at eight to ten premium; treasury notes (rates of interest not mentioned) are quoted at one to two per cent. discount. Under date of January sixth, seven per cent. treasury notes are quoted at one to one and a quarter discount; dollars and gold not quoted, except doubloons, for which seventeen dollars and fifty cents are asked. Under date of January ninth, treasury notes (rate of interest not mentioned) are quoted at one per cent. discount; Spanish dollars, eight to nine premium; gold, eight to eight and a half premium. Under date of January sixteenth, treasury notes (rate of interest not mentioned) are quoted at one to one and a quarter discount; dollars and gold, at eight to nine premium. Under date of January twenty-third, treasury notes (rate of interest not mentioned) are quoted at one to one and a half discount; dollars, nine to nine and one-half premium; gold, not quoted. Under date of January twenty-fourth, gold is quoted at eight and one-half to nine premium. The letter of the second January, 1816, is dated second January, 1815, but was evi-

dently intended for 1816, the letters immediately following it being dated in 1816, and it is found in its regular order in the book.

Seventh interrogatory. Look at exhibit No. 4, now produced to you, and state whether or not you are acquainted with either of the signatures therto, and if yea, which and in whose handwriting is such signature?

Answer. I am acquainted with the signature, Nevins & Townsend, that is in the handwriting of Russell H. Nevins, who was at that time a member of the firm of Nevins & Townsend, brokers in the city of New York.

Eighth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir.

DAVID H. NEVINS.

Subscribed in my presence, October 3, 1856.

G. R. J. BOWDOIN,
Commissioner.

NEW YORK, *January* 2, 1815.

* * * * * * * * *

Drafts on Boston, 9 per cent.; Philadelphia, 4½ *a* 5; Baltimore, 8 *a* 9, 6 per cents. 92¼, 7 per cent. treasury notes par, none for sale; gold, 9 *a* 10; doubloons, 17 *a* 18; 7 per cent. stock, par; bills on London, 8 *a* 8½.

B. & N.

Messrs. BRIDGE & RENOUF.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, adminstrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I certify that the above is an exact extract from a letter contained in the letter-book of Butler & Nevins, identified as being such book by the testimony of David H. Nevins, heretofore taken in this action; and I further certify that said letter is written in said book after letters dated in December, 1815, and among letters dated in January, 1816, and from its position among said letters, it is my opinion that it should have been dated in 1816.

G. R. J. BOWDOIN,
Commissioner.

Dated New York, November 28, 1856.

NEW YORK, *August*, 31, 1814.

GENTS: Your letter by Captain Thomas, is received enclosing bills..... 2,600 00
Discount on $5 Hudson 10
H. Cassell's note 5.. ..... 5 00

$2,594 90

H. Cassell's note 5 ds. we shall credit you when sold. The banks in Philadelphia all stopped paying specie on the 29th instant, and all our banks to-day; our apprehensions have been realized to the full. We do not think the effects of this measure, however, will be so serious as many apprehend.

B. & N.

Messrs. G. & DEAN.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I hereby certify that the above is an exact copy of a letter contained in the letter book of Butler & Nevins, identified as being such book by the testimony of David H. Nevins, heretofore taken in this action.

G. R. J. BOWDOIN,
Commissioner.

Dated New York, November 28, 1856.

NEW YORK, *August* 31, 1815.

DEAR SIR: * * * * * * *

Specie and drafts on Boston are very regular, and appear to settle down at the prices below:

The $171 Philadelphia is forwarded to Messrs. S. and J. Nevins as you requested.

B. & N.

T. B. WOOD.

Six per cent., 95; 5⅜ Treasury notes, 98½,98¾; post notes, 98; 7 per cent., 101¼; Philadelphia, 95 *a* 96½; Baltimore and Washington, 92½; Virginia, 93½ *a* 94½; North Carolina, 95 *a* 96; South Carolina, 98; Boston, on sight, 111; dollars, 109 *a* 110; change, 108 *a* 109 *a* 110; gold, 110 *a* 111.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* the UNITED STATES OF AMERICA.

I hereby certify that the above is an exact extract from a letter contained in the letter book of Butler & Nevins, identified as being such letter-book by the testimony of David H. Nevins heretofore taken in this action.

G. R. J. BOWDOIN,
Commissioner

Dated NEW YORK, *November* 20, 1856.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ALBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Joseph H. Choate, a witness produced on the part of the above-named claimant in the above entitled action, this sixteenth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and what has been your place of residence for the past year; have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant, and if yea, n what degree?

Answer. My name is Joseph H. Choate; I am twenty-four years of age; I am a lawyer, and have resided in New York city for the past year; I have no interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant, or the intestate whom he represents.

Second interrogatory. Are you familiar with the general principles of such accounts as those which are contained in exhibit Nos. 1 and 2, now shown to you, and have you examined the said exhibits?

Answer. I am somewhat familiar with the general principles of such accounts, and have examined said exhibits, and understand the principles upon which they are constructed.

The further examination of this witness was adjourned to October 17, 1856, at half past nine a. m.

October 17, 1856. The further examination of this witness was resumed pursuant to adjournment.

Third interrogatory. What are the prices at which the casks and packages are charged throughout the accounts? What is the value of the casks and packages which it appears from the said accounts were placed in deposit, under the contract of seventh of November, eighteen hundred and eleven? What is the value of such casks and packages received out of deposit under the said contract? What is the value of the casks and packages, which it appears from the said accounts, were placed in deposit under the contract of the twenty-fifth of February, eighteen hundred and thirteen, and what is the value of the casks and packages received out of deposit under said last mentioned contract.

Answer. Meat barrels are charged at one dollar; flour barrels at thirty-eight cents; liquor casks vary from one dollar and a half to three dollars; but as I have generally found them valued at three dollars, I have estimated them at that valuation when their value is not fixed in the accounts; all the boxes at twenty-five cents, and vinegar casks at two dollars and one-half. The value of the casks and packages which it appears from said accounts were placed in deposit, under the contract of the seventh November, estimated at the above prices, is twenty-one thousand three hundred and forty-eight dollars and seventy-one cents, and the value of the casks and packages received out of deposit under said contract, estimated at the same prices,

is six thousand eight hundred and eight dollars and fifty-four cents. The value of the casks and packages which it appears from said accounts were placed in deposit under the contract of the twenty-fifth of February, estimated at the same prices, is twenty-five thousand and ninety dollars and sixty-nine cents, and the value of the casks and packages received out of deposit under said last mentioned contract, estimated at the same prices, is sixteen thousand and eighty-five dollars and seventy-eight cents. If all the casks received out of deposit under this contract are estimated at one dollar and a half, the total value of casks and packages received out of deposit would be fourteen thousand one hundred and ninety-eight dollars and twenty-eight cents.

Fourth interrogatory. Have you computed the number of gallons which it appears from the said accounts were issued to the troops after the month of July, eighteen hundred and thirteen? and if yea, what is the said number of gallons?

Answer. I have computed it, and the number issued subsequent to July, eighteen hundred and thirteen to the end of that year, is eighty-seven thousand three hundred and ninety-five gallons, and in the year eighteen hundred and fourteen the said number is two hundred and twenty thousand nine hundred and ninety-eight gallons; some of the items included in the issues of eighteen hundred and thirteen were in part issued in eighteen hundred and fourteen, and cannot be distinguished in the accounts, but the issues of eighteen hundred and fourteen are all confined to that year. In making this computation I have rejected all the items which appear by exhibit No. 3. to have been disallowed by the accounting officer, and have made proper deductions for all items which he has disallowed in part. If the items of captured provisions, which appear by exhibit No. 3 to have been suspended to await depositions, were inserted in the above computation, the number of gallons issued as above in eighteen hundred and thirteen, would be eighty-nine thousand seven hundred and ninety-eight, and in eighteen hundred and fourteen, the number of gallons issued would be two hundred and twenty-three thousand and eighty-six.

Fifth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. Not to my present recollection.

J. H. CHOATE.

Subscribed in my presence, October 17, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES.

Deposition of Jacob Barker, a witness produced on the part of the above named claimant, in the above entitled action, this sixteenth day of October, one thousand eight hundred and fifty-six, at the city of New York:

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest direct or indirect in the claim which is the subject of inquiry in this action? Are you related to the claimant? and if yea, in what degree?

Answer. My name is Jacob Barker; I am a banker, and an attorney at law; I have been a banker since the year eighteen hundred and sixteen, but have been familiar with stocks and banking business since the year eighteen hundred, and particularly so since the year eighteen hundred and twelve; I am in my seventy-seventh year; my place of residence for the past year has been in the city of New Orleans, but from the year seventeen hundred and ninety-seven to the year eighteen hundred and thirty-four, I resided in the city of New York; since then the State of Louisiana has been my place of residence; I have no interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you acquainted with the firm of Butler & Nevins in the years 1814, 1815 and 1816? if yea, what was their business?

Answer. I was acquainted with that firm; their business was that of money, stock, and note brokers, and dealers therein on their own account.

Third interrogatory. What was their reputation and standing as such brokers at that time?

Answer. Very respectable.

Fourth interrogatory. Will you explain the meaning of the quotations of stocks, treasury notes, specie, and other securities, contained in the letter book of the said firm of Butler & Nevins, marked No. 1, D. H. N., now shown to you, under the dates of August 31, 1815, September 9, 13, 15, and 23, 1815; also of the said quotations in the letter book of said firm, marked No. 2, D. H. N., now shown to you, under the dates of January 2, 4, 6, 9, 16, 23, and 24, 1846?

Answer. Under the date of August 31, 1815, silver dollars commanded one hundred and nine to one hundred and ten, bank notes of the New York banks for the one hundred; in other words, bank notes sold for about nine per cent. discount for the legal currency of the country; treasury notes, interest at seven per cent., sold for one and a quarter premium, payable in New York bank notes; so that at that date such treasury notes according to such quotations, and according to my recollection, would be at a discount of from eight to nine per cent., payable in specie. The face or nominal value of New York bank notes was the basis of all the quotations referred to at the several dates mentioned, and was the general basis of quotation of all financial securities at that period; these banks were then and for a long time afterwards in a state of suspension of specie payments.

Fifth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir.

JACOB BARKER.

Subscribed in my presence October 31, 1856.

G. R. J. BOWDOIN,
Commissioner.

The examination of the said Jacob Barker was resumed this twentieth day of October, eighteen hundred and fifty-six.

Sixth interrogatory. Were you, in the years 1814, 1815, and 1816, acquainted with the firms of Prime, Ward & Sands, and of Nevins & Townsend? and if yea, what was their occupation and their standing and reputation, and do you know the signatures attached to Exhibit No. 4 to be signatures of the said firms respectively?

Answer. I was. Prime, Ward & Sands, and Nevins & Townsend were stock exchange and note brokers; their standing and reputation was highly respectable; I do know the signatures attached to Exhibit No. 4 to be signatures of the said firms respectively.

Seveventh interrogatory. Was there any difference, and if any what, in the market value of stock or treasury notes between New York and Washington cities.

Answer. The market value of United States stocks and treasury notes in specie at Washington, D. C., has always been regulated by the price those securities bore in New York, seldom varying more than one-quarter or one-half of one per cent.; the variance in the quotations of the two markets arose from the greater depreciation of the notes of the banks of the District of Columbia than the notes of the New York banks.

Eighth interrogatory. Do you know of any other matter relative to the claim in the above entitled actions?

Answer. No, sir.

JACOB BARKER.

Subscribed in my presence October 31, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased, *against* THE UNITED STATES of AMERICA.

The further deposition of Jacob Barker, a witness produced and sworn in the above entitled action on the part of the claimant.

Ninth interrogatory. Were you acquainted with O. H. Hicks, who resided in the city of New York in the year eighteen hundred and twenty-three? were you acquainted with his handwriting? and if yea, look at Exhibit No. 6, now produced, and state in whose handwriting are the words "O. H. Hicks, commissioner," which are written upon the first page of said exhibit?

Answer. I was acquainted with the said Hicks and with his hand writing, and the words "O. H. Hicks, commissioner," are in his handwriting.

Tenth interrogatory. Were you acquainted with the firm of S. & J. Nevins & Co., who were doing business in Philadelphia in the year eighteen hundred and twenty-five, and were you acquainted with the handwriting and signature of the firm? and if yea, look at the exhibit now produced to you marked No. 7, and state in whose hand-

writing is the signature "S. & J. Nevins & Co.," on the first page of said exhibit?

Answer. I was acquainted with said firm, but did not know their handwriting, they were respectable money dealers at the time

Eleventh interrogatory. Have you any recollection of the prices of specie, Treasury notes, and bills of exchange or drafts at the times respectively referred to in said exhibits? and if yea, state whether or not the prices as stated in said exhibits are correctly given?

Answer. I had an intimate acquaintance with such prices at those times, and the prices respectively stated in said exhibit correspond with my recollections.

Twelfth interrogatory. Do you know of any other matter relative to the claim in this action?

Answer. I do not recollect anything at present.

JACOB BARKER.

Subscribed in my presence, December 18, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Roderick Sedgwick, a witness produced on the part of the above named claimant, in the above entitled action, this twenty-ninth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant? and if yea, in what degree?

Answer. My name is Roderick Sedgwick; I am a broker; am about sixty-eight or sixty-nine years of age, and have resided in the city of New York for the past year; I have not any interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. What was your occupation in the years 1813, 1814, 1815 and 1816?

Answer. I was a grocer, and dealt in all sorts of liquors; my place of business was the city of Albany.

Third interrogatory. Were you familiar with the market prices at which domestic liquors, including whiskey, were sold and bought in the years 1813 and 1814? if yea, do you remember any variation in the market price of such liquors which occurred at that period?

Answer. I was familiar with the market prices of such liquors in those years; all liquors at that period of war advanced in price, and more especially domestic whiskey, owing to a duty which the government placed upon stills, as was supposed: from my examination of books of account and my recollection, I can state that domestic whiskey

advanced at that period from fifty and sixty cents a gallon, up to a dollar and a dollar and ten cents.

Fourth interrogatory. Do you know of any other matter relative to the claim in the above entitled action.

Answer. I do not.

R. SEDGWICK.

Subscribed in my presence October 29, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Hugh McGinnis, a witness produced on the part of the above named claimant, in the above entitled action, this twenty-ninth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age and place of residence for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant? and if yea, in what degree?

Answer. My name is Hugh McGinnis; I am a cooper, and was so previous to the war of 1812, and through that war; am seventy years of age, and have resided in the city of Brooklyn for the past year: I have not any interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you familiar with the prices at which meat barrels, whiskey casks, vinegar casks, flour barrels, and candle or soap boxes were bought and sold during the years 1813, 1814 and 1815? and if yea, what were such prices respectively?

Answer. I was familiar with the prices of such barrels and casks during those years, but not with the boxes: the price of white oak hogsheads, wooden bound, which were whiskey casks, varied from two dollars and a half to three dollars; these held one hundred and twenty gallons; meat barrels averaged from ten shillings to twelve shillings; vinegar casks about the same price as whiskey casks; flour barrels fifty cents.

Third interrogatory. Do you know of any other matter relative to the claim in the above entitled action.

Answer. No, sir.

HUGH McGINNIS.

Subscribed in my presence, October, 29, 1856.

G. R. J. BOWDOIN,
Commissioner.

On cross-examination the said Hugh McGinnis, testified as follows:

First cross-interrogatory. Do you know anything of the casks in which the provisions were furnished to the troops during the war by

Anderson? if so, state what they were worth at the several places and at the several times at which they were emptied.

Answer. I do not know anything about those casks.

Second cross-interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. Not that I recollect.

The direct examination being resumed, the witness testified as follows:

Fourth direct-interrogatory. Did the market value of the casks and barrels referred to by you in your examination in chief vary throughout the State of New York? and if so, how much?

Answer. If they varied at all, the variation was very trifling.

Fifth direct-interrogatory. Do you know of any other matter relative to the claim in question? if so, state it.

Answer. I do not.

HUGH McGINNIS.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES of AMERICA.

Deposition of Francis Denham, a witness produced on the part of the above named claimant, in the above entitled cause, this 13th day of January, 1857, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence, and what has it been for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this cause? are you related to the claimant, and if yea, in what degree?

Answer. My name is Francis Denham; I am a cooper; I am about fifty-four years of age; I reside in State street, city of Brooklyn, and have resided there for the last eleven years. I have no interest whatever in the claim which is the subject of this action; I am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Do you know what were the prices at which meat barrels, whiskey casks, vinegar casks, flour barrels, and candle or soap boxes, were bought and sold during the years 1813, 1814, and 1815? and if yea, what were such prices, respectively; state the grounds of your knowledge.

Answer. I have no knowledge except from the books of my father, who was a cooper, and whose books I kept. By those books it appears that during the years referred to meat barrels were worth about one dollar and a quarter, whiskey casks of thirty-two gallons, were worth about the same; those of about one hundred and twenty gallons, were worth from three to three and a half dollars. I don't think we had

any vinegar casks, they must have been worth the same as whiskey casks according to their size; flour barrels were worth three shillings, perhaps a little more. I don't know anything about the value of candle or soap boxes.

Third interrogatory. Are those the prices which were charged on your father's books for the articles above referred to, and what has become of those books?

Answer. Those are the prices which were charged for those articles on my father's books; those books were destroyed by fire several years since.

Fourth interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. Not that I recollect at present.

On cross-examination, witness testified as follows:

First cross-interrogatory. Do you know anything of the casks in which the provisions were furnished to the troops, during the war by Anderson? if so, state what they were worth at the several places, and at the several times at which they were emptied.

Answer. I do not know anything about those casks.

Second cross-interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. I do not.

FRANCIS DENHAM.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN.
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, &c., deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of James W. Bleecker, a witness produced on the part of the above named claimants, respectively, in the above entitled actions, this thirteenteth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claims which are the subjects of inquiry in these actions? Are you related to the claimants, or either of them, and if yea, in what degree?

Answer. My name is James W. Bleecker; am a stock broker; am sixty-nine years of age; have resided during the past year in the city of New York, and have always resided in that city; I have no interest, direct or indirect, in the several claims which are respectively the subjects of inquiry in the two above entitled actions, and am not in any way related to either of the above named claimants, or to said Elbert Anderson.

Second interrogatory. Were you acquainted with the individual

members of the following firms, namely: Prime, Ward & Sands, Nevins & Townsend, and Butler & Nevins?

Answer. Yes.

Third interrogatory. What business were those firms engaged in in the years 1814, 1815 and 1816?

Answer. The firms of Prime, Ward & Sands, and Butler & Nevins, were, during those years, engaged in the stock and exchange business; the firm of Nevins & Townsend was not formed until afterwards, as he believes.

Fourth interrogatory. Are either of the members of said firms now living?

Answer. No.

Fifth interrogatory. What was the reputation and standing of the said firm of Butler & Nevins?

Answer. The firm was not wealthy, but they were considered highly honorable and respectable men.

The further examination of this witness was adjourned to October 31, at half-past 1 o'clock, P. M.

October 31, 1856, the examination of this witness was resumed.

Sixth interrogatory. Have you examined the quotations of stocks, treasury notes, specie, and other securities contained in the letter books of the said firm of Butler & Nevins, marked No. 1, D. H. N., under the dates of August 31st, September 2d, 11th, 19th, 20th, and 22d, October 11th, November 10th, and 12th, and December 12th, all in the year 1814; also, under the dates of August 31st, September 9th, 13th, 15th, and 21st, all in the year 1815; also, those contained in the letter book of said firm, marked No. 2, D. H. N., under the dates of January 2d, 4th, 6th, 9th, 16th, 23d, and 24th, all in the year 1816?

Answer. I have.

Seventh interrogatory. Do you consider those quotations as correct?

Answer. According to the best of my belief they are correct; I was engaged in the same kind of business as the said firm during those years. The banks of New York suspended specie payments, according to the best of my recollection, on the thirty-first day of August, 1814.

Eighth interrogatory. Do you know of any other matter relative to the claims in the above entitled actions respectively?

Answer. No.

JAMES W. BLEECKER.

Subscribed in my presence, November 1st, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Reuben W. Folger, a witness produced on the part of the above named claimants, respectively, in the above entitled actions, this seventh day of November, one thousand eight hundred and fifty-six, in the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Reuben W. Folger; am a merchant; upwards of sixty years of age, and have resided in the city of New York for the past year; I have no interest, direct or indirect, in the claim which is the subject of inquiry in the above entitled actions, and am not related to the claimant or to said Elbert Anderson.

Second interrogatory. What was your occupation in the years 1812, 1813, and 1814?

Answer. I was a distiller of domestic liquors, including whiskey and other liquors; I then resided at Athens, Greene County, State of New York.

Third interrogatory. Do you remember any variation occurring in the market prices of domestic liquors, including whiskey, at or about the time of the passage of a law by Congress imposing a duty per gallon on the capacity of stills, which law was passed in July, 1813?

Answer. I recollect that there was a rise generally in the price of domestic liquors, including whiskey, shortly after the passage of that law; I recollect selling sixteen hogsheads of whiskey, after the passage of the law, at a dollar and six cents a gallon, and I had paid for it, previous to the passage of the law, about fifty cents a gallon.

Fourth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No.

R. W. FOLGER.

Subscribed in my presence, November 7th, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDARSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Henry James Anderson, the above named claimant, produced and sworn as a witness to prove the loss of two certain drafts referred to on page 288 of exhibit No. 5, in the above entitled action, and also of the notice of protest of the draft secondly mentioned on said page, and also in relation to the loss of all other papers connected with such drafts and protests, this 27th day of November, 1856:

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Henry James Anderson; am not engaged in any business; I was formerly professor of mathematics at Columbia College; am fifty-seven years of age, and have resided for the past year in the city of New York; I am both directly and indirectly interested in the claim referred to; I am the claimant, and am one of the sons of the said Elbert Anderson.

Second interrogatory. Are the papers and vouchers, and other documents appertaining to Elbert Anderson, deceased, and relating to his contracts with the United States of America, for the supply of the army, in your possession, and, if not, state what disposition you have made of them?

Answer. They are not in my possession; I delivered all of them that I could find, after a diligent search, to my son, E. Ellery Anderson, who is prosecuting this claim as my attorney.

HENRY JAS. ANDERSON.

Subscribed in my presence, November 27, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Henry James Anderson, the above named claimant, produced and sworn as a witness in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857:

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are your in any, and what, degree related to the claimant?

Answer. My name is Henry James Anderson; was formerly a professor; am nearly fifty-eight years of age, and have resided for the past year in the city of New York; I am directly interested in the claim which is the subject of inquiry in this action; I am the claimant in this action, and am the eldest son of the said Elbert Anderson, deceased.

Second interrogatory. When did the said Elbert Anderson die? State all you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson, and the United States, for

the subsistence of the army, from the time of his decease to the present time?

Answer. The said Elbert Anderson died in the year eighteen hundred and thirty. All the books, papers, vouchers, and accounts referred to in the above interrogatory, and which were in the possession of the said Elbert Anderson at the time of his death, came into my possession immediately upon his death. From time to time these books, &c., were transferred to the custody of my brother-in-law, Mr. Thomas Lord, for safe keeping; they were delivered to him in the original chests in which I found them; I received then in 1851, from my own brother, Elbert J. Anderson, and they continued in my possession until I transferred them to my son, Elbert Ellery Anderson.

HENRY JAS. ANDERSON.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Thomas Lord, a witness produced and sworn on the part of the claimant in reference to the custody of all books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is Thomas Lord; I am a merchant; am upwards of fifty years of age; and have resided in the city of New York for the past year; I am directly interested in the claim which is the subject of inquiry in this action; I am a brother-in-law, having married a daughter of said Elbert Anderson, deceased.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson and the United States, for the subsistence of the army, from the time of his decease to the present time.

Answer. I received several chests said to contain the books, &c., referred to in this interrogatory from my brother-in-law, Mr. Henry James Anderson; they were stored in my house, and were not opened while they remained there; I delivered them to my brother-in-law, Mr. Elbert J. Anderson.

THOS. LORD.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN, *Commissioner.*

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Elbert J. Anderson, a witness produced and sworn on the part of the claimant in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is Elbert J. Anderson; am not engaged in any business; and about fifty-six years of age; I have resided in Newport during the past year; I am directly interested in the claim which is the subject of inquiry in this action; I am a brother of the claimant, and one of the sons of the said Elbert Anderson, deceased.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson and the United States, for the subsistence of the army, from the time of his decease to the present time.

Answer. The books, &c., referred to in this interrogatory, were received by me from my brother-in-law, Mr. Thomas Lord, and were stored in my house; the chests in which they were contained, remained unopened while in my house; I delivered them to my brother, Henry James Anderson.

ELBERT J. ANDERSON.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Elbert Ellery Anderson, a witness produced and sworn to prove the loss of two certain drafts, referred to on page 288, of Exhibit, No. 5, in the above entitled action, and also of the notice of protest of the draft secondly mentioned on said page, and also in relation to the loss of all other papers connected with such drafts and protest this 27th day of November, 1856.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of

inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Elbert Ellery Anderson; I am a counsellor at law; am twenty-three years of age; and have resided for the past year in the city of New York; I am indirectly interested in this claim; my compensation for my services in prosecuting the same in this court, being to a certain extent dependent on its recovery; I am the son of the claimant, and the grandson of Mr. Elbert Anderson, deceased.

Second interrogatory. Are the papers, and vouchers, and other documents appertaining to Elbert Anderson, deceased, and relating to his contracts with the United States of America, for the supply of the army in your possession; and have you made diligent search among them for the two drafts referred to on page 288 of Exhibit No. 5, in this action; and also for the notice of protest of the draft secondly mentioned on said page, and also for any and all other papers connected with such drafts and protests; and, if yea, state when was such search made, and what was the result of it?

Answer. The papers, and vouchers, and documents referred to in this interrogatory, are in my posiession, and were delivered to me by my father, Mr. Henry J. Anderson; I have, during the progress of this litigation, made repeated and diligent searches among said papers, vouchers, and documents, for the said drafts, protests, and the notices of protests thereof, and all other papers connected therewith, and only find the letters contained in Exhibit No. 5, on page 288, and a notice of protest now attached to said page, and also some letters in which the fact of said drafts having been protested, is incidentally mentioned, and which letters will be produced if required.

E. E. ANDERSON.

Subscribed in my presence, November 28, 1856.

G. R. J. BOWDOIN,
Commissioner.

COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, *against* THE UNITED STATES OF AMERICA.

Deposition of Elbert Ellery Anderson, a witness produced and sworn on the part of the claimant, in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this seventeenth day of January, 1857, at the city of New York.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence during the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this cause? Are you in any, and what, degree related to the claimant?

Answer. My name is Elbert Ellery Anderson; I am a counsellor at law; am twenty-three years of age; have resided during the past

year in the city of New York; I am indirectly interested in the claim which is the subject of inquiry in this action; I am the son of the claimant, and grandson of the intestate.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, referring to the several contracts between the said Elbert Anderson, and the United States, for the subsistence of the army, from the time of his decease up to the present time.

Answer. I received from my father, Mr. Henry James Anderson, in the year eighteen hundred and fifty-four or thereabouts, several chests containing books, papers, vouchers, and accounts, relating to the contracts referred to in this interrogatory, and they have remained in my possession ever since.

Third interrogatory. Look at exhibit No. 8, and state what that book contains, and where you found the receipts and other papers contained therein; also, look at exhibits Nos. 9 to 23, both inclusive, and state where you found them.

Answer. I found all the papers referred to in the last interrogatory among other papers in the chests delivered to me by my father, as stated in my answer to the second interrogatory.

The further examinatition of this witness was adjourned to January 31.

January 31, 1857, examination resumed.

Fourth interrogatory. Look at exhibits numbered 24 and 25, and state what they are.

Answer. Number 24 is a letter received by me from the Third Auditor in answer to a requisition made upon him; number 25 is an account which was contained in number 24, and refers to the final settlement of the contract of 1811.

Fifth interrogatory. Look at exhibits numbered one to seven, (1 to 7,) both inclusive, and state where you found them.

Answer. I found them among the papers contained in the chests above referred to.

E. E. ANDERSON.

Subscribed in my presence, January 31, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of John W. Martin, a witness produced on the part of the above-named claimant in the above entitled action, this twentieth day of January, eighteen hundred and fifty-seven, in the city of New York.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence during the past year? Have you any interest, direct or indirect, in the claim which is the subject of

inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is John W. Martin; am a broker; am fifty-six years of age; have resided for the past year in the city of Brooklyn; I have not any interest direct, or indirect, in this claim, and am not in any degree related to the claimant, or to the intestate whom he represents.

Second interrogatory. Look at the book now shown you, marked exhibit number 8, and state which of the signatures, if any, appended to the receipts therein contained, are known to you to be genuine.

Answer. I am acquainted with the handwriting of Isaiah Townsend, John Townsend, Samuel Allen, and Jesse Smith, all of whom are now dead, and their signatures appended to their receipts or contracts respectively as they appear in the said exhibit are genuine.

Third interrogatory. Do you know of any other matter relative to the claim in question?

Answer. Not that I recollect at present.

JOHN W. MARTIN.

Subscribed in my presence, January 20, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, *vs.* THE UNITED STATES OF AMERICA.

I certify that the following are exact extracts from sundry letters contained in the letter-book of Butler & Nevins, refererd to in the foregoing deposition of David H. Nevins, viz:

Letter of September 20, 1814, exchange notes, 4½ *a* 5 per cent.; letter of October 11, 1814, exchange notes 4 per cent. discount, 6 per cts. 77 *a* 78; letter of November 15, 1814, treasury notes, 5½ a 6 per cent. discount; Virginia and Baltimore, 6 per cent. discount; District banks, 7 per cent. discount; letter of December 9, 1814, treasury notes 7½ *a* 8 per cent., considerable sales, 6 per cent., 76 dull, government bills 3 per cent., advanced; letter of December 12, 1814, treasury notes, 7½ *a* 8 per cent. discount—6 p. c. 65; 76, government bills 3 per cent., advanced; dollars 15 per cent., advanced.

G. R. J. BOWDOIN.
Commissioner.

NEW YORK, *January* 30, 1857.

Copy from the Records of the War Department.

WAR DEPARTMENT, *October* 13, 1814.

SIR: Your letter of the third instant, endorsing the contract, correspondence, and accounts of James Byers, esq., contractor, has been

received. The question submitted to the department appears to have been anticipated in Mr. Byers's proposal of January 27, 1812, to furnish the deposits referred to, reserving to himself a claim on the government for reasonable and equitable allowances beyond the price stipulated in his contract for all supplies furnished before that contract should take effect.

It does not appear by the contract referred to that Mr. Byers was bound to furnish casks and boxes, or, in other words, it does appear that when the rations were issued, the casks and boxes belonged to the contract. If, therefore, the casks, boxes, &c., have not been returned to him, and are charged at a fair price, the amount should be passed to his credit.*

I am, sir, very respectfully, your obedient servant,

JAMES MONROE.

Col. T. LEAR,
Accountant War Department.

The foregoing is a true copy.

C. VANDEVENTER.

The above allowance to Mr. Byers, for casks and boxes, was intended to compensate him for his trouble and expense sustained in supplying rations and making deposits before his contract commenced, and no allowance for casks or boxes must be made except in cases of special contract with this department.†

JAMES MONROE.

Col. T. LEAR,
Accountant War Department.

TREASURY DEPARTMENT,
Register's Office, October 9, 1823.

SIR: In compliance with your request of the 6th instant, I have to refer you to the following statement of the manner in which the several drafts on the Secretary of War, therein referred to, were paid. Whether the banks upon which the treasury drew, in payment of your bills, did at the time redeem their notes in specie, cannot be ascertained from the records of this office; neither do they exhibit any information as to the relative value of treasury notes in other parts of the United States; those issued at the treasury were considered as at par when issued.

I am, very respectfully, sir, your obedient servant,

MICHAEL NOURSE,
For the Register.

* This stands unaltered on the *books of the War Department.*

† This after construction was interlined on the *document in the accountant's department* after my claim was exhibited. See page 20, printed document.

Statement.

Date of draft on Sec'y of War, as per Anderson's statement.	In whose favor.	Amount.	When paid.	How paid.
Feb. 24, 1814.	T. Townsend.....	$67,500 00	Mar. 25, 1814	By Bank of Columbia, (in specie.)
Mar. 1, 1814.	J. Burral	150,000 00	April 4, 1814	By Bank of America.
April 4, 1814.	T. Townsend.....	75,000 00	April 18, 1814	By Farmers and Mechanics' Bank, Philada.
	W. Fish.....	5,000 00	April 25, 1814	By Mechanics' Bank, New York.
June 9, 1814.	T. Townsend.....	100,000 00	June 29, 1814	{ $37,500 by New York State Bank, Albany. $62,500 by Mechanics' Bank, New York.
Sept.—, 1815.	.....	56,756 42	Sept. 1, 1815	{ $56,700 in treasury notes issued at treasury. $56 42 by Manhattan Company, New York.
Mar. 15, 1815.	....	181,943 57	Jan. 11, 1816	{ $188,500 in treasury notes issued at treasury. $132 91 by Mechanics' Bank, New York.
Jan. 5, 1816.	.....	7,389 34		
		188,632 91		

TREASURY OF THE UNITED STATES,
Washington, August 30, 1815.

SIR: Enclosed you will find my two drafts, Nos. 3,839 and 322, (as below,) for $56,756 42, the amount of warrant No. 2,877 issued by the Secretary of War, on receipt whereof be pleased to favor me with an early acknowledgment, specifying the sum received in treasury notes.

With due consideration, I am, sir, your obedient servant,
TH. T. TUCKER,
Treasurer of the United States.

Draft 3,839 on S. Flewwelling, cashier for..... 56 42
" 322 on Jos. Nourse, register..... 56,700 00

$56,756 42

E. ANDERSON, esq.

No. 322. Pt. U. U. 2,877. $56,700.

TREASURY OF THE UNITED STATES,
Washington, August 30, 1815.

SIR: At sight, pay to Elbert Anderson, esq., New York, or order, fifty-six thousand seven hundred dollars in treasury notes, value received.

TH. T. TUCKER,
Treasurer of the United States.

To JOS. NOURSE, esq., *Register.*

This amount was transmitted to me by J. T. Nourse, register. See my acknowledgment on the back of the letter—dated September 1, 1815—of Thos. T. Tucker, dated August 30, 1815.

E. ANDERSON.

NEW YORK, *September* 5, 1815.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, enclosing a draft on the Manhattan Company for fifty-six dollars and forty-two cents, and a draft on the Register of the Treasury for fifty-six thousand seven hundred dollars, which last amount has been received this day from Joseph Nourse, esq., Register of the Treasury, in treasury notes.

I have the honor to remain your obedient servant,

ELBERT ANDERSON.

THOMAS T. TUCKER,
Treasurer of the United States.

Differences arising on settlement of the account of Elbert Anderson, for supplies furnished under his contract dated February 25, 1813.

Balance claimed by him per his statement		$266,109 02
Balance remaining in his favor per official statement		181,234 57
Differences		84,874 45
Differences arising as follows:		
Amount of casks, barrels, &c., containing the provisions deposited by him under this contract are suspended, viz:		
For the deposits on Lake Ontario	$14,781 16	
For the deposits on Lake Champlain	6,702 10	
For the deposits in the city of New York, &c.	1,461 70	
	22,944 96	
Amount of 911 meat barrels and 3,268 flour barrels, containing the deposits at Salina, Utica, Oswego, Burlington, and Plattsburg, per supplementary account of deposits	2,152 84	
		25,097 80

The following abstract, said to be for rations issued in Seneca county, and bearing the signature of Lieut. Jacob Meyers, and charged by Mr. Anderson in his general abstract of issues for December, 1813, January, 1814, and February, 1814, have been disallowed, that officer having disavowed his signing those abstracts, viz:

Abstract A, Nos. 106, 109, 110, 112, 122, and 123 to general abstract for December, 1813, and January, 1814, amounting to 16,057 complete rations at 17½ cents	2,809 97	
Abstract A, Nos. 68, 69, and 70 to general abstract for February, 1814, amounting to	13,223	

Abstract A, Nos. 63 and 64 to said general abstract for February, 1814, are duplicates, amounting to.....	2,409		
	15,632		
Complete rations at 17½ cents.		2,735 60	
			5,545 57
Amount of provisions charged by Mr. Anderson in his general abstract for the quarter ending November 30, 1813, have been deducted as inadmissible, being improper vouchers, viz:			
Voucher A, No. 238, Lieut. Kellogg's receipt for two barrels of pork.....	533⅓		
Voucher A, No. 239, Sergeant Stewart's receipt for four barrels of beef.	640		
	1,173⅓		
At 5½ cents per ration.		64 53	
Voucher A, No. 239, Caleb Luther's receipt for 744 bushels wheat, said to be 2,614 rations of flour, at 7½ cents.....		196 05	
			260 58
Amounts of voucher B, Nos. 53 and 54, for 256 complete rations issued to Indians at West Cayuga, and charged by Mr. Anderson in his general abstract for February, 1814, are disallowed, being duplicates, at 17½ cents...			44 80
Amount charged by Mr. Anderson in his general abstract for the quarter ending August 31, 1813, being for provisions furnished to the fleet on Lake Ontario and to the crews of two gun-boats at Plattsburg, is inadmissible at this office, the vouchers whereof have been accordingly returned to Mr. Anderson, viz:			
Amount of issues to the fleet on Lake Ontario, under command of Commodore Chauncey, in August, 1813.....		4,893 96	
Amount of issues to the crews of two gun-boats at Plattsburg, under command of Captain Hall, in June, 1813.....		282 97	
			5,176 93
The following sums charged by Mr. Anderson in his general abstract of issues, being for one cent per ration as a premium for issuing provisions from deposit, and within the Canadas, have been deducted. The proper credits are given him in the abstracts of deposits received and charged in his account current, viz:			
Amount charged in the quarter ending August 31, 1813		8,857 50	
Amount charged in the quarter ending November 30, 1813.....		4,171 95	

Amount charged in the quarter ending November 30, 1813	4,293 90	
Amount charged on the provisions returned into deposit at Plattsburg in said quarter, is inadmissible	722 14	
Amount charged in general abstract for December, 1813, and January, 1814	44 58	
		18,090 07
This amount charged by him in his general abstract for the quarter ending May 31, 1814, for an augmented price of rations issued within the Canadas, and for damages sustained by the breach of contract on the part of Major General Hampton, by his appointment of issuing commissaries, from September 15, 1813—the time of his landing his army on Cumberland head—to December 15, 1813, is suspended		16,843 75
Amount charged in general abstract for said quarter, said to be for provisions issued and destroyed at Sodus, in June, 1813. The voucher for this charge being imperfect, is therefore suspended, (see voucher A, No. 199,) viz:		
6,400 rations of whiskey, at 3½ cents	224	
10,000 rations of meat, at 5½ cents	550	
30,364 rations of flour, at 7½ cents	2,277 32	
		3,051 32
Amount claimed by Mr Anderson for provisions furnished, as per vouchers A, Nos. 10, 11, and 12 to general abstract for said quarter, is suspended for further explanation, viz:		
No. 10, for 40 barrels flour, } Damaged.		
No. 11, for 25 do. }		
65 barrels flour, equal to 11,325 rations, at 7½ cents	849 37	
Amount of barrels containing said flour	24 70	
No. 12, for 38 barrels pork and beef, 9,386 rations, at 5½ cents	516 27	
		1,390 34
Amount of voucher F, No. 7, to the aforesaid abstract, being for expenses in removing the provisions from Plattsburg in October, 1813, is deducted, being a duplicate		100 92

Errors and overcharges in the abstracts of issues.

12⅔ rations flour overcharged for New York 2d June, 1813, voucher 7, at $4\frac{8}{10}$ cts.	$0 59
189 rations whiskey overadded for Champlain, July, 1813, voucher 200, at 3½	6 61

13 complete rations overcalculated for Plattsburgh, in June, 1813, No. 87.
120 complete rations overcalculated for Plattsburgh, in July, 1813, No. 88.
115 complete rations overcalculated for Sackett's Harbor, in July, 1813, No. 125.
10 complete rations overcalculated for Sackett's Harbor, in August, 1813, No. 126.
1 complete ration overadded for Auburn, in July, 1813, No. 136.
20 complete rations overcalculated for Geneva, in August, 1813, No. 150.
120 complete rations overcalculated for Fort George, in June, 1813, No. 169.
610 complete rations overcalculated for Fort George, in July, 1813, No. 179.
210 complete rations overcalculated for Fort George, in July, 1813, No. 171.
1 007 complete rations overcalculated for Fort George, in August, 1813, No. 172.

2,226 complete rations overcalculated, at 17½ cts.	389 55	
Amount overcharged in the prices of flour barrels and boxes, furnished to contain provisions for the troops on march.....	13 74	
		$410 49

[See account for quarter ending 31st August, 1813.]

26 complete rations, twice drawn for 25th and 26th December, 1813, see voucher No. 48, Hudson.
32 complete rations twice drawn for 22d September, 1813, see voucher No. 56, Albany
1,300 complete rations overcalculated for Niagara, September and October, 1813, see voucher No. 222.
696 complete rations twice drawn, for 1st and 2d October, 1813, see voucher No. 226.
160 complete rations overcalculated for Lewistown, September, 1813, see voucher No. 40, militia.
100 complete rations overcalculated for Fort Richmond, September, 1813, see voucher No. 9, volunteers.

2,314 complete rations overcalculated, at 17½ cts.	$404 95	
718 complete rations improperly corrected as having been an error in the abstract for Greenbush, for September, 1813, see voucher 71, at $14\frac{8}{10}$ cents.....	106 26	

8 rations whiskey overadded, in abstract for Plattsburgh, voucher 45, militia.....	28	
14⅜ rations flour overcalculated, in abstract No. 159 and 161, for Oswego.		
13 rations flour overcalculated, in abstract No. 172, for Sackett's Harbor.		
27⅝ rations flour overcalculated, at 7½ cents	2 07	
This sum overcalculated in his general abstract on 135¼ pounds candles, for New York harbor	2 00	
This sum overcalculated in said general abstract, on 330,006 complete rations, for Sackett's Harbor.....	1,000 00	
This sum overcalculated on the issues for the Indian department.....	5 00	
Amount overcharged in the prices of flour barrels, casks, and boxes furnished to contain provisions for troops on march.....	13 68	
		1,534 24

[See account for quarter ending 30th Nov., 1813.]

Overcalculated on 984 rations flour, for Fort Columbus and Bedlow's Island.....	1 00	
Overcalculated on 19,419 complete rations for volunteers.....	50	
8 complete rations overcalculated for New York city, in December, 1813, for volunteers, at 14$\frac{8}{10}$ cents.....	1 18	
84 complete rations overcalculated for Sag Harbor, in January, 1814, voucher 21.		
25 complete rations overcalculated for Hudson, in January, 1814, voucher 39.		
20 complete rations overcalculated for Albany, in December, 1813, voucher 40.		
3 complete rations overcalculated for Oswego, in January, 1814, voucher 84.		
700 complete rations overcalculated for Sackett's Harbor, in January, 1814, voucher 86.		
6 complete rations overcalculated for Chaeauguay, in December, 1813, voucher 100.		
33 complete rations overcalculated for Junius, in January and February, 1814, voucher 108.		
11 complete rations overcalculated for Canandaigua, December, 1813, voucher 116		
3 complete rations overcalculated for Auburn, January, 1814, voucher 121.		
20 complete rations overcalculated for Fort George, in December, 1813, voucher 126.		

24 complete rations overcalculated for Canandaigua, in December, 1813, voucher 4, militia.

929 complete rations overcalculated, at 17½ cts. 162 57 — 165 25

[See account of December 1813, and Jan., 1814.]

900 complete rations overadded in abstract for New York city, February, 1814, at 14 5/6 cts. 133 20
25 complete rations twice charged, for Hudson, 26th February, 1814, voucher 25.
9 complete rations overcalculated for Hudson, in February, 1814, voucher 26.
100 complete rations overadded for Chateauguay, in February, 1814, voucher 59.

134 complete rations, at 17½ cents..... 180 95 — 314 15

[See account for February, 1814.]

9 complete rations overcalculated, in abstract for May, 1814, in Ellis's Island, at 14 5/6 cts. $1 33
288 complete rations overcalculated, for Poughkeepsie, in March and April, 1814.
900 complete rations overcalculated, for Plattsburgh, in April, 1814.
41 complete rations overcalculated, for Schenectady, in March, 1814.
6 complete rations overcalculated, for Cherry Valley, in April, 1814.
10 complete rations overcalculated, for Canandaigua, in March, 1814.
185 complete rations overcalculated, for Batavia, in May, 1814.
10 complete rations overcalculated, for Champlain, in April, 1814.
2 complete rations overcalculated, for Cambria, in March, 1814.

1,442 complete rations overcalculated, at 17½ cts. 252 35
100 rations whiskey overcalculated, Plattsburgh, March, 1814, at 3½ cents..... 3 50
¼ pound soap overcharged, Blackrock and Williamsville..... 3
Overcharged in price of barrels, &c., containing provisions for troops on march..... 8 40 — 265 61

[See account for the quarter ending 31st May, 1814.]

Overadded in general abstract of issues..... $0 09

Amount overcharged on flour barrels furnished to contain provisions for troops on march...	1 69	
Error made by Mr. Anderson of 8 pounds candles, as having been omitted, has been taken into view in his calculation.....	1 44	
	3 22	

[See acc't for q'r ending May 31, 1814, in continuation.]

Amount of 1,000 rations of meal overcharged from voucher A No. 2, to the supplementary abstract for the quarter ending 31st May, 1814.....	55 00	
		58 22
Amount of provisions stolen at Cambria in the month of April, 1814, as stated in Lieut. Col. Harris's certificate, (see voucher D, No. 3, herewith,) is disallowed, being a duplicate voucher, viz:		
2,848 rations whiskey, at 3½ cents.....	$99 68	
350 rations flour, at 7½ cents.....	26 25	
		125 93
The amount of value of the rigging and sails appertaining to the schooner Enterprise, which was saved by the owners, being $250, is charged with the amount of the said schooner, instead of being deducted from value of said schooner, making a difference of.....		500 00
Amount of 7,555½ rations of pork, overcharged in voucher No. 5, to the abstract of losses, (this voucher is marked D, No. 2, in the general abstract for the quarter ending 30th November, 1813, which see,) at 5½ cents.....		415 54
Amount of 27 rations flour overcharged in voucher, No. 13, to abstract of losses, voucher returned to Mr. Anderson for further testimony.....		$2 2
The following vouchers included in the general abstract of losses sustained by Mr. Anderson, have been returned to him for the purpose of obtaining further evidence as to losses therein mentioned—the amount whereof is accordingly suspended, viz:		
Voucher No. 173, being amount of provisions destroyed and taken by the enemy at Forty-mile Creek, in June, 1813, suspended for deposition.....	1,823 82	
Part of voucher No. 1, being the appraised value of schooner "Enterprise," suspended for further proof.....	1,150 00	

Voucher No. 2, for provisions taken at Black Rock, suspended for want of deposition.....	682 12		
Voucher No. 7, for provisions taken at Niagara, Lewiston, and Schlosser, for same reason	12,170 57		
Voucher No. 8, for provisions at Black Rock and Buffalo, for same reason.....	4,993 45		
Voucher No. 11, for provisions at Williamsville, for same reason.....	634 13		
Voucher No. 12, for provisions stolen at Cambria, for same reason.....	125 93		
Voucher No. 13, for provisions at Eighteen-mile Creek, for same reason.....	378 77		
Voucher Nos. 14 and 15, for baking utensils, for further proof, for same reasons.....	450 00		
Voucher Nos. 16, for provisions destroyed at Oswego, for deposition, for same reason.....	4,722 60		
Voucher No. 17, for provisions destroyed at Oswego, for deposition, &c.; none on the cercertificate.....	5,096 43		
Voucher No. 21, amount of Joseph Pardie's claim for driving cattle, as disallowed.....	274 00		
Voucher No. 22, amount of provisions captured at Oswego, suspended for want of deposition and other circumstances, noted on vouchers, Nos. 16 and 17.....	6,726 12		
Voucher No. 23, for 200 pounds soft bread, (a duplicate;) this is included in voucher No 6.	13 28		
	39,243 22		
Amount of casks, barrels, &c., containing provisions captured at Black Rock and Buffalo, suspended..... 333 90			
Amount of casks and barrels at Oswego and Putneyville, captured at Black Rock and Buffalo..... 444 10			
	778 00		
		40,021 22	
Amount of barrels, &c., containing provisions on board schooner "Enterprise".....	158 25		
Amount of barrels, &c., containing provisions at Black Rock.....	30 16		
Amount of barrels, &c., containing provisions at Cape Vincent.....	48 00		
		236 41	
Amount short credited in his account for provisions received from deposits, abstract B, No. 4.....		74 66	
Amount of provisions received from deposits made by Augustus Porter, on 25th June and July, 1813, at New York and at Black Rock, is not credited by Mr. Anderson.....	2,950 57		

Amount of 42 barrels of pork and 51 barrels of beef, received by his agent at Oswego Falls, dated, 31st May, 1814, not credited in Mr. Anderson's statement.....	878 46	3,829 03
Amount of 19 flour barrels overcharged in his abstract for the quarter ending 31st May, 1814, in continuation, on the provisions destroyed at Oswego, on 6th May, 1814; see voucher No 17 to abstract of losses.....		7 22
Overcharged on provisions issued to carpenters and teamsters repairing boats at Plattsburgh; see voucher No. 5, to quartermaster's account.....		1 67
Balance due the United States on settlement of his account for supplies furnished under his contract, dated 7th November, 1811, brought to his debit in the present account.....		1,813 31
		$125,221 53

From which deduct the following short calculations, &c., made in his genreal abstract of issues, viz:

First quarter:		
2 complete rations short added for Niagara, in July, 1813, voucher 167.		
8 complete rations short added for Champlain, in July, 1813, voucher 200.		
10 complete rations short added, at 17½ cents.....	1 75	
12 rations whiskey, Fort George, June, 1813.....	02	
		1 77
Second quarter:		
3 complete rations short added for Auburn, voucher 189.		
9 complete rations short added for Canandaigua, voucher 203.		
1 complete ration short added for Auburn, voucher 52, Ind. department.		
12 complete rations short added, at 7½ cents.....	2 27	
13½ rations meat, short added at Oswego, No. 167.....	73	
		3 00
Third quarter:		
100 complete rations short added for Albany, No. 44, at 17½ cents.....		17 50
45 complete rations short added for Canandaigua, No. 71, at 17½ cents.....		7 88

Fourth quarter:			
100 complete rations short added at Fort Columbia, May, 1814, at 14 $\frac{8}{10}$ cents	14 80		
Difference of 7½ per ration on 674 rations issued to Sea fencibles	50 55		
6 pounds candles short added for Cherry valley, in April	1 08		
4,000 complete rations short added for Batavia in April, 1814.			
10 complete rations short added for Auburn, in May, 1814.			
4,010 complete rations, at 17½ cents	701 75		
		768 18	
19 flour barrels furnished to contain provisions for troops on March, 1814, omitted in his statement		4 75	
Over credited in his account of deposits received per voucher B, No. 1		06	
Over credited in his account of deposits received per voucher B, No. 3		80 19	
The following provisions included in voucher No. 22, to abstract of losses are not charged by Mr. Anderson, viz:			
4,160 rations of bread, at 7½ cents	312 00		
6,260 quarts of salt, at 2½ cents	156 50		
Short calculated	27		
		468 77	

The following sums disallowed in the present statement of differences have been credited in Mr. Anderson's account:

Improper vouchers by P. Meyers	$5,545 57	
Navy rations on Lake Ontario	4,893 96	
Navy rations at Plattsburgh	282 97	
Navy rations at Plattsburgh	57 84	
Short credited in this voucher	3 83	
Errors, &c., credited in his account	1,000 50	
Charge of one cent per ration for issues in Canada, &c	17,367 93	
This amount allowed him, being 12½ per cent. on the issues to General Hampton's army,	9,843 75	
		40,356 45
Difference required		$84,865 08

Dr. General statement to contract November 7, 1811.

B.—No. 1.

First. For amount of sundry provision received by me between the 31st December, 1812, and 22d May, by virtue of orders from General Dearborn, dated April the 4th, 1814, from deposit made under contract of 7th November, 1811, at Canandaigua, Cayuga, Geneva, Oswego, and Albany, as per general abstract on file in the accountant's office, $111,802 92, at 14 cents, contract price, per ration, but which was in reality transferred to the issue of contract of 25th February, 1813, on Lake Ontario, when the company concerned in that contract could not supply from their own purchase on deposit, and for which had they supplied from their deposit after 1st of June they would have been charged the additional contract price, viz: 17½ cents per ration, which difference by the said contract grows out of and to the benefit of contract 7th November, 1811; see report and abstract book.....		$26,891 20
Second. Allowance of issuing the aforesaid deposit by virtue of the contract 7th November, 1811; see additional article to the said contract.....		20,891 61
Third. This amount allowed me under contract 7th November, 1811, for issues made by General Wade Hampton, as an interference of my rights by the additional article of said contract, for issues from the deposit made on Lake Champlain antecedent to the contract 25th February, 1813,.....		9,843 75
Fourth. For amount of provision received by me between 12th November and 25th May, 1814, being from deposits made under contract 7th November, and partly from deposits made by James Byers, but erroneously entered as from deposits made under contract of 25th February, when it is a well-known fact that not more than one-fourth was deposited by the contract of 25th February; see voucher on file and general abstract of deposits made and received back for issue on Lake Champlain.....	193,287 34	
Twelve and a half per cent. allowance and one cent for issue of the above deposit under the said contract; see additional article.....	33,825 27	

Deduct one fourth the above as really arising under contract of 25th February, 1813,.....	8,456 31	
		25,368 96
Extra services, E. A.,.....		12,500 00
Fifth. For additional amount of provision received from deposit made under contract of 7th November, 1811, between June, 1813, and May, 1814, on Lake Champlain erroneously entered as from deposit of 25th February, 1813. "See Abstract Book."		31,064 65
Allowance of 12½ per cent., and one cent per ration for issue of 155,313 rations under additional articles of above contract.....		5,435 96
		88,431 48

Allowance.

Being desirous to render justice in equity as well as in law, to the gentlemen engaged with me in the article marked C for the execution of the articles marked A and B, dated 25th February, 1813, signed by John Armstrong, I have proposed a generous distribution of the above sum of 88,431 48 viz., one equal half part to contract of 7th November, 1811; the other equal half part to contract of 25th February, 1813. Inasmuch as the agents employed by articles A and B aided, under my direction and control, to carry the article for issue under contract of 7th November, 1811, into effect, and notwithstanding the services, aid, and assistance of one of the principals to the contracts marked A and B, dated 25th February, 1813, was all along withheld, contrary to the express stipulation and the consideration to be performed, and kept to excuse his share of the profits arising out of the last mentioned contract. On this express condition, however, that the party who has not rendered the services or aid in carrying the contract marked A and B into execution, nor the articles of issue of contract dated 7th November, 1811, shall forthwith make an equitable allowance to the parties who have devoted their time, health, and labor to a happy and prosperous fulfilment of the original article marked A and B, dated 25th February, 1813..... 44,215 74

Errors Excepted. $44,215 44

NEW YORK, *January* 12, 1816.

ELBERT ANDERSON.

No. 4.

We hereby certify that, upon an examination of our books, it appears that United States treasury notes in this market were, on fourth of April, in the year one thousand eight hundred and fourteen, at par, payable in specie. On the eighteenth of April, one thousand eight hundred and fourteen, at par, payable in specie. On the twenty-fifth of April, one thousand eight hundred and fourteen, at ninety-nine and one-half per cent., payable in specie. On the twenty-ninth June, one thousand eight hundred and fourteen, at ninety-nine and one-half per cent., payable in specie. On the first September, one thousand eight hundred and fifteen, at eighty-nine per cent., payable in specie; and on the eleventh day of January, one thousand eight hundred and sixteen, at ninety-one and forty-three hundredths per cent., payable in specie.

PRIME WARD & SANDS.
NEVINS & TOWNSEND.

NEW YORK, *November* 1, 1823.

City and County of New York, ss:

On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me Joseph Sands, known to me to be one of the firm of Prime Ward & Sands of this city, exchange brokers, and acknowledged that he had executed the within instrument in the name of said firm, and for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

City and County of New York, ss:

On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me, Russell H. Nevins, known to me to be one of the firm of Nevins & Townsend of this city, exchange brokers, and acknowledged that he had executed the within instrument in the name of said firm, and for the purposes therein mentioned.

O. H. HICKS, *Commisioner.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, Richard B. Connolly, clerk of the city and county of New York, do hereby certify that O. H. Hicks, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a commissioner of deeds for said city and county, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of the county, the fifteenth day of April, 1856.

RICHARD B. CONNOLLY, *Clerk,*

No. 6.

NEW YORK, *November* 8, 1823.

I hereby certify that on the 1st September, 1815, Treasury notes were sold in this city at one per cent. discount, payment in notes of the banks in this city, and that on the 11th January, 1816, treasury notes were also sold in this city at three-fourths of one per cent. discount, payment to be made in the notes of the banks in this city.

I also certify that on the 10th January, 1816, I received a draft, drawn at Boston on this city, which was purchased at Boston at nine and a half per cent. discount, said draft payable here in the notes of the banks here. And that on the 26th September, 1815, we purchased a draft on Boston at 12½ per cent. premium, payable in the notes of the banks in this city.

A. H. LAWRENCE.

City and county of New York, ss:

On the eighth day of November, 1823, personally appeared before me, Augustus H. Lawrence, of this city, exchange broker, and known to me, and acknowledged that he executed the above instrument for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

No. 7.

PHILADELPHIA, *December* 6, 1825.

SIR: Agreeably to your request, we have made a reference to our books, and herewith annex the quotations of treasury notes and specie at the periods mentioned, viz:

In September, 1815, specie is quoted at 17 to 18 per cent. premium; drafts on Boston, at 17 to 18 per cent. premium; treasury notes, at 4 to 5 per cent. premium.

In January, 1816, specie is quoted at 13 to 14 per cent. premium; drafts on Boston, at 13 to 14 per cent. premium; treasury notes, at 4 to 5 per cent. premium.

These quotations, we think, may be relied on as correct.

We are, sir, yours, very respectfully,

S. AND J. NEVINS & CO.

No. 9.

Contract of Elbert Anderson, jun., for supplying rations from the 1st day of January, 1813, to the 31st day of May, 1814.

ARTICLES OF AGREEMENT made on the twenty-fifth day of February, anno Domini, one thousand eight hundred and thirteen, between John Armstrong, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, jun., of the city of New York, of the other part.

This agreement witnesseth, That the said John Armstrong, for and behalf of the United States of America, and the said Elbert Anderson, jun., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz:

First. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York and the western and northern vicinity, within the Canadas, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive, at the following prices; that is to say, at any place where rations shall be issued within the city and harbor of New York, and at the encampment at Greenbush, at fourteen cents eight mills per ration. At all other places within the State of New York and the Canadas, at seventeen cents five mills per ration; provided, however, that for all rations required within the enemy's territory, the price of the rations shall be augmented in proportion to the expense of transportation and issue in the enemy's country, the supplies having been delivered on account of government at magazines designated for that purpose within the State of New York; and when it may become necessary, the public agents, boats, and teams shall be employed in transporting from such depots, by order of the commanding general, on representation of the contractor or his proper agent that such transportation cannot be furnished independently of the army assistance; provided, also, that the contractor shall at all times have reasonable notice when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat, five cents five mills; for bread or flour, four cents eight mills; liquor, three cents five mills; small parts, one cent. Where the price of ration is seventeen cents five mills, the prices of the component parts of the same shall be, for meat, five cents five mills; bread or flour, seven cents five mills; liquor, three cents five mills; small parts, one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles; twelve cents five mills per pound for soap; four cents five mills per quart for vinegar, and two cents five mills per quart for salt; provided, also, that the thirty days' notice required to be given by the government of the post or place where rations may be wanted, shall not be understood to apply when the rations are taken from any deposits previously made on account of the government.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz: One pound and a quarter of beef, or three quarters of a pound of salted pork; eighteen ounces of bread or flour; one gill of rum, whiskey or brandy,

and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or office commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the Elbert Anderson, jun., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the line aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration.

It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required without expense to the United States.

Fourth. That whenever and so often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, jun., or his agent, and in case of disagreement, a third person, to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jun., or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after a reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey or inspection, may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in the case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jun , his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to

compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations or the component parts, and at the appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, jun., his heirs, executors or administrators shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe keeping of the provisions deposited from time to time at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, jun., his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jun., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum, from the time of such expiration until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators; provided, however, that no member of Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War office of the United States, and the said [L. S.] Elbert Anderson, jun., hath hereto set his hand and seal the day and year above written.

JOHN ARMSTRONG. [L. S.]
ELBERT ANDERSON, JR. [L. S.]

Signed, sealed and delivered in presence of—
DAN'L BAKER.
GEORGE BOYD.

Whereas by a certain agreement made on the day of between Secretary of War, and of the State of it was stipulated that the months, supplies of rations at

Now therefore it is agreed between the said and

First. That in an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually delivered on or before the last day of next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage, of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies, as aforesaid, to the troops at the several posts, in rations to consist as follows, viz:

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whiskey.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half candles to every hundred rations.

Fifth. That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and affixed the seal

of the War Office of the United States, and the said ha hereto set hand and seal the day and year last above written.
Signed, sealed, and delivered in the presence of—

No. 10.

ARTICLES OF AGREEMENT made on the seventh day of November, anno Domini, one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, jun'r, of the city of New York, of the other part.

This Agreement witnesseth, that the said William Eustis, for and on behalf of the United States of America, and the said Elbert Anderson, jr., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz:

First. That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, (Niagara and its dependencies excepted) and the State of New Jersey, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first day of May, eighteen hundred and thirteen, at the following prices; that is to say, at any place where rations shall be issued within the city and harbor of New-York, for thirteen cents five mills per ration, within all other parts of the State of New York at fourteen cents per ration, and within the State of New Jersey for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof shall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts, one cent. Where the price of the ration is fourteen cents, the component parts thereof shall be, for meat, five cents five mills, flour or bread four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz: One pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of the bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the States of New York and New Jersey aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, jr., when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States stationed in the harbour of New York an equivalent in good malt liquor or light wines, at such season of the year as in the opinion of the President of the United States may be necessary for the preservation of their health.

It is understood that if the contractor shall be required to deposite provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place, where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, or his agent, and in case of disagreement, a third person, to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jr., or his agent, shall fail, or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper, to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jr., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the exact price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished, whenever in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, jr., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time at such posts respectively; and the contractor shalls uffer no loss for want of such stores.

Ninth That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to

Tenth. That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the States above mentioned, may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jr., his heirs, executors, or administrators in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum, per annum, from the time of such expiration, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors, or administrators, be found to be due to him or them, for and on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and the [L. S.] said Elbert Anderson, jun'r, hath hereto set his hand and seal the day and year first above written.

W. EUSTIS.
ELBERT ANDERSON, JUN'R.

Signed, sealed, and delivered in the presence of—
DAN'L PARKER.
JOHN J. ABERT.

WHEREAS by a certain agreement made on the seventh day of November, 1811, between W. Eustis, Secretary of War, and Elbert Anderson, jr., of the State of New York, it was stipulated that the deposits of three months, supplies of rations may be required. Now therefore it is agreed by the order of the said W. Eustis to Major General H. Dearborn that when issues are required from the public deposits that he might call on the said Elbert for that purpose.

First. That an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually delivered on or before the last day of May, 1813, next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement, or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article, or delivery to be made by the public store, purser, or other agents who have charge of the deposits.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage, of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies as aforesaid, to the troops at the several posts, in rations to consist as follows, viz:

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whisky.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said H. Dearborn, in behalf of the Secretary of War, on behalf of the United States, hath hereunto subscribed his name and affixed his seal; and the said Elbert Anderson hath hereto set his hand and seal the day and year last above written.

H. DEARBORN. [L. S.]
ELBERT ANDERSON. [L. S.]

Signed, sealed and delivered in the presence of—

WAR DEPARTMENT, *November* 27, 1812.

SIR: In my letter of October 29th, you were assured that arrangements would be made with the contractors for giving the deposits of provisions which had been required of them. Major Anderson and others expressed a willingness to make the issues, and we believe you should find it for the public interest to employ them in preference to other agents. You are authorized to fill the blanks attached to their contracts accordingly.

I have the honor to be, very respectfully, sir, your ob't servant,

W. EUSTIS.

Major General HENRY DEARBORN, *Plattsburg.*

No. 11.

Memorandum.

It would give me pleasure to pay Mr. Anderson's claim, as it is now settled by the accountant; and the difficulty in respect to the payment does not arise from the want of funds at the Treasury, but from the want of an adequate appropriation. The Secretary of War pressed upon the committee of Congress a larger appropriation before the adjournment, but he could not obtain it.

My letters and overtures, respecting the payment of Mr. Anderson's claim, are all correct. When they were written I had not entered the War Office, and certainly I was unaware of the state of the army appropriations. Hence, when I said that the claim could be paid or funded at par, or at the rate of 95 per cent., I could only mean that it should be legally paid or funded, as far as there was an appropriation to authorize it.

But the act of Congress respecting the issue of treasury notes has been misunderstood. It does not authorize the payment of claims in those notes beyond the amount of actual appropriations. It only authorizes a payment in those notes where the debt is ascertained, and an appropriation for paying the debts has been made by law. Mr. Anderson's debt is ascertained; and it could be paid in treasury notes, or it might be received in subscription to the loan, but for the single constitutional reason, there is no law that appropriates money to pay it, the general appropriation being exhausted.

An effort is making in a lawful manner to enrich the appropria-

tions, and the department may be able not only to subsist the army for the current year, but to pay off at least a part of the arrearges. On this ground, however, nothing is meant to be promised in Mr. Anderson's case, more than in numerous other cases, greater in amount, if not greater in hardship.

JUNE 6, 1815.

No. 12.

WAR DEPARTMENT, *June* 20, 1815.

SIR: On the 15th of March last, a warrant issued in your favor, agreeably to the certificate of the accountant of this department for one hundred and eighty-one thousand two hundred and forty-three dollars and thirty-seven cents, the balance found to be due to you on your late contract, the payment of which has only been delayed by the want of funds to meet this item of army expenditures.

The moment that an appropriation shall be made by Congress for the *subsistence of the army*, and which, no doubt, will be one of the first acts of the approaching session, your draft in favor of Mr. Fish for the above amount will be duly honored by this department.

I am, sir, very respectfully, your most obedient servant,

A. J. DALLAS.

ELBERT ANDERSON, JR., Esq.,
Late Army Contractor, New York.

No. 13.

[Extract.]

WASHINGTON, *July* 11, 1815.

DEAR SIR: The balances due you on the several settlements have been reported in the usual manner, but as the appropriation for the subsistence of the army is nearly exhausted, I do not think it will be practicable for you to obtain full payment of your debt until new appropriations shall have been made by Congress. But if full payment shall not be made before this time, I think there is no doubt but Congress will provide for the indemnification of the creditor, and especially where essential services have been faithfully rendered.

With great respect and esteem, I am, dear sir, your most obedient servant.

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 14.

TREASURY DEPARTMENT, *August* 23, 1815

SIR: Your letters have been received. You have been told explicitly that the appropriations for the War Department are not

sufficient to cover all the demands upon it; but that as soon as the necessary arrangements can be made, a part of your demand will be paid.

I am, sir, your obedient servant,

A. J. DALLAS.

Mr. ELBERT ANDERSON, *New York.*

No. 15.

TREASURY DEPARTMENT,
Register's Office, September 1, 1815.

At the request of the Secretary of the Treasury I have transmitted by this day's mail, in a package to your address, fifty-six thousand seven hundred dollars in treasury notes, numbered and lettered as follows: No. 528 *a* 716, letters *a*, *b*, and *c*; 567 notes, of $100 each, $56,700.

The duplicate receipts herewith enclosed you will please to sign and return to this office.

I am, very respectfully, sir, your obedient servant,

JOSEPH NOURSE.

ELBERT ANDERSON, Esq.

NEW YORK, *September* 5, 1815.

I herewith have the honor to enclose you the duplicate receipts required by your letter of the 1st instant.

I have the honor to remain your abedient servant,

ELBERT ANDERSON.

JOSEPH NOURSE, Esq.,
Register Treasury United States.

No. 16.

DEPARTMENT OF WAR, *March* 23, 1826.

SIR: Agreeably to the request made by Mr. Cambreling to cause you to be furnished with a statement of what seems to have been paid for interest and damages on protested bills of exchange under the decision of the Secretary of War, of January 27, 1816, and what allowances have been made by the department for casks, boxes, &c., I transmit herewith a report of the Third Auditor, which furnishes the information required.

I have the honor to be your obedient servant,

JAMES BARBOUR.

ELBERT ANDERSON, *Washington City.*

No. 17.

DEPARTMENT OF WAR,
Accountant's Office, October 20, 1814.

SIR: I have received your letter of the 17th with its enclosure. The adjustments of your accounts as late contractor, cannot, from the great pressure of business, be taken up at this time. When it shall be practicable to enter upon the subject, you will be informed.

Respectfully, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 18.

DEPARTMENT OF WAR,
Accountant's Office, March 14, 1815.

I certify that there is due to Elbert Anderson the sum of one hundred and eighty-one thousand two hundred and forty-three dollars and fifty-seven cents, being the balance of his account for supplies furnished under his contract dated February 25, 1813, from June 1, 1815, to May 31, 1814, the perid contracted for.

TOBIAS LEAR.

$183,243 57. No. of the warrant, 2,247.

True copy. GID. DAVIS, *Clerk.*

THE SECRETARY OF WAR.

No. 19.

DEPARTMENT OF WAR,
Accountant's Office, March 14, 1815.

SIR: Your account for suppplies furnished under contract dated 25th February, 1813, has this day been adjusted, and a balance found due you thereon of one hundred and eighty-one thousand, two hundred and forty-three dollars and fifty-seven cents, which sum has accordingly been reported to the Secretary of War for payment.

The aforementioned balance differs from your statement, in a sum of $84,865 45, which is fully explained in a statement of differences herein enclosed for your government.

I am, with respect, sir, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON Esq.

No. 20.

DEPARTMENT OF WAR.
Accountant's Office, March 10, 1815.

SIR: Your account for supplies furnished under contract dated 7th November, 1811, has this day been adjusted, and a balance found due

thereon to the United States of thousand eight hundred and thirteen dollars and thirty-one cents, which sum will be carried to your debit in account under contract of 25th February, 1813.

The aforementioned balance differs from your statement in a sum of $27,940 63, which you will find fully explained in a statement of differences herein enclosed for your government.

I am, with respect, sir, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 21.

WAR DEPARTMENT, *October* 31, 1814.

SIR: Your letters of the 26th and 27th instant have been received. As soon as your accounts are acted upon and settled by the accountant of this department, in the accomplishment of which no time will be lost, any balance which may be due you shall be promptly paid.

It is impossible to accept or pay your drafts until a settlement of your accounts is made.

I have the honor to be, respectfully, sir, your obedient servant,

JAS. MONROE.

Mr. ELBERT ANDERSON,
Late Contractor, New York.

No. 22.

DEPARTMENT OF WAR, *July* 10, 1815.

SIR: It appears from a report made by the accountant of this department, dated the 27th of June, that there is due to Elbert Anderson the sum of fifty-six thousand seven hundred and fifty-six dollars and forty-two cents. Forty thousand dollars of which can immediately be paid, by a draft on Baltimore, and the residue will be paid whenever Congress shall make the necessary appropriations.

I have the honor to be, very respectfully, your obedient servant,

GEO. GRAHAM.

ELBERT ANDERSON, Esq., *New York.*

No. 23.

WAR DEPARTMENT, *July* 12, 1815.

SIR: It appears from a report made to this department by Colonel Lear, bearing date the 10th of July, 1815, that there is due you seven thousand three hundred and eighty-nine dollars and thirty-four cents,

on account of your contract, which will be paid so soon as Congress shall make the necessary appropriations.

I have the honor to be, with great respect, your obedient,

GEO. GRAHAM.

ELBERT ANDERSON, Esq.,
New York.

No. 24.

TREASURY DEPARTMENT,
Third Auditor's Office, December 4, 1856.

SIR: In compliance with your request of the second instant, I herewith transmit a copy of the statement of differences arising on a settlement made March 10, 1815, of the accounts of Elbert Anderson, for supplies furnished under his contract with the United States, dated November 7, 1811.

Very respectfully, your obedient servant,

ROB'T J. ATKINSON, *Auditor*

E. E. ANDERSON, Esq.,
Willard's Hotel, Washington, D. C.

No. 25.

Differences arising on settlement of the account of Elbert Anderson, for supplies furnished under his contract dated 7th November, 1811.

Balance due the United States per Mr. Anderson's statement		$29,753 94
Balance due the United States per official statement		1,813 31
Difference		$27,940 63
Arising as follows:		
This sum is credited by Mr. Anderson, under date of 10th May, 1813, which is not charged on the books of this office		$50,000 00
To which add amount of errors found in his favor on settlement of 27th May, 1813, as stated in an account of differences sent to him	$2,604 95	
Amount of errors in his favor on settlement of 6th July, 1813, per statement of differences herewith	142 14	
Amount of errors in his favor on settlement of 12th May, 1814	98 67	2,845 76
		$52,845 76

From which deduct amount of errors and overcharges made by him, as stated in account of difference filed with settlement of 27th May, 1813, viz:			
Amount of rations issued to marines		$50 40	
Error in general abstract for August, 1812		9 53	
Do. do. do. September, 1812		40 88	
Do. do. do. October, 1812		19 32	
Do. do. do. November, 1812		111 22	
Do. do. do. December, 1812		85 63	
Do. do. do. January, 1813		6 17	
			$323,15
Amount of errors and overcharges as stated in account of difference with settlement of 6th July, 1813	$98 82		
Due for due bills	101 57		
		200 39	
Amount due per difference with settlement of 12th May, 1814	45 07		
Do. do. do.	155 12		
Do. do. do.	157 02		
Do. do. do.	10 64		
		367 85	
Overcharged in general account, barrels, &c., for deposit at Sandy Hook, twice charged	$99 92		
Amount disallowed on settlement of 10th October, 1812, is inadmissible	37 10		
The charge made by him for errors found in his favor on settlement of 27th May, 1813, is already noticed above	2,604 91		
		2,741 93	
		$3,633 32	
Amount short credited by him in provisions received from deposit		15 40	
Amount of barrels, casks, &c., charged by him for deposits, is disallowed		21,386 41	
			25,135 13
			$27,710 63
Add amount of payment made by him to James Lowrie, for storage of deposits in New York, between 6th March, 1812, and 3d February, 1813, which is not charged by Mr. Anderson in his statement, (see voucher No. 5)			231 08
			$27,941 71

NEW YORK, *May* 16, 1815.

SIR: I have the honor to forward to your address, per the charge of Mr. James Thorne, my account inclusive with the United States since the report of the 14th of March, for a further demand of ninety-nine thousand three hundred and thirty-six dollars and ninety-six cents, arising as follows, from the suspension of former accounts of captured provision for the want of deposition which are now furnished:

Amount, vouchers No. 173, 1, 2, 7, 8, 11, 12, 13, 14, 15, 16, 17, and 22		$35,680 44
Ditto, No. 99		3,051 32
Abstract A, of whiskey at Sackett's Harbor		4,248 72
Amount of hides, tallow, &c., lost and captured by the enemy on the Niagara frontier, and which have not been included in former abstracts. See vouchers, &c.		9,044 00
Amount transportation from deposit, provisions on shores of Lake Ontario and inland, by orders on file and vouchers herewith		25,565 24
		77,589 72
Casks, boxes, &c., suspended in contract dated November 7, 1811. See report of difference of the accountant	$21,486 41	
From which deduct amount, casks, boxes, &c., received back for issue under the aforesaid contracts. See account "B" of credit forwarded July 30, 1814	7,514 11	
And "B" No. 1, 2, 3, 4, 5, forwarded August 22, 1814		13,972 30
Casks, boxes, &c., suspended on contract dated February 25, 1813. See report of differences	25,097 80	
February 25, captured at Black Rock, Buffalo, &c., suspended	778 00	
February 25, on board schooner Enterprise	256 41	
	26,112 21	
From which deduct amount, casks, boxes, &c., received back from issue on Lakes Champlain, Ontario, New York, Sag Harbor, &c., from June 1, 1813, to June 1, 1814. See vouchers of credit B.	14,175 96	
		11,936 33
		103,498 35

Credit by amount of provision received from A. Van Sanborn, Utica deposit, as not credited in former account, the receipts not having come to my knowledge before, viz:

303 barrels flour, 52,790 rations, 7½ cents.....	$3,959 25
Barrels containing rations, 38 cents.....	115 14
Sales 24 barrels damaged flour of Soders's deposits by certificate N. Merrell.....	87 00
	4,161 39
Balance due E. Anderson.....	99,336 96
	103,498 35

All of which is respectfully submitted for your examination and official report.

With sentiments of great respect, your obedient servant,

ELBERT ANDERSON.

TOBIAS LEAR, Esq.

Accountant's office, Washington City.

NEW YORK, *December* 26, 1814.

DEAR SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, and it gives me great pleasure to learn that my accounts are in train for settlement.

The delay that has existed, has not only created great solicitude of mind, but it has been attended with considerable pecuniary embarrassments to myself and friends; so much so that I had made my arrangements to have proceeded to Washington in the course of the preceding week; but unfortunately I have since been confined to my room with severe inflammation in my knee joint.

I must now, sir, return you my thanks for taking up my accounts, and I flatter myself no interruption will be given to their final adjustment. Mr. Robert M. Penoyer, who has been in my office as principal clerk, will hand you this letter with some additional vouchers under contract dated November 17, and February 25, which you will do me the favor to cause their examination with the other documents.

Mr. R. M. Penoyer has entertained a wish to receive some public employment. He proposes to offer a bid for the subsistence of the army within the State of New Jersey on his own account. Should he do so, on terms favorable to government, I recommend him as a person well qualified for the station of a contractor, and as an honest and upright character. His friend, John N. Luff, whom he proposes as one of his sureties, is a gentleman of great resources and solid property.

With sentiments of great respect, I remain, sir, your most obedient servant,

ELBERT ANDERSON.

Hon. TOBIAS LEAR.

IN THE COURT OF CLAIMS.

No. 4.

On the petition of HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased.

Brief of the U. S. Solicitor.

The petitioner claims the sum of one hundred and forty-nine thousand three hundred and sixty-six dollars and ninety-seven cents principal, and about four hundred thousand dollars interest, making a total of about $550,000. The claim originated in two contracts with the War Department by said Elbert, for the supply and issue of rations to the troops of the United States, and for supplying provisions at fortified places and military posts; one dated 7th November, 1811; the other dated 25th February, 1813, and, as alleged, "is partly for amounts actually due him by the terms of said contracts, partly by way of compensation for articles furnished and services rendered beyond the requisitions of said contracts, and partly by way of indemnity for alleged breaches of the covenants therein contained by the United States."

The claim is set forth in the petition under eight heads; the 1st and 4th embracing each several sub-divisions.

1st. All the sub-divisions of this head are for compensation for casks, barrels, &c., in which the rations furnished were contained.

a. The first sub-division is for casks, &c., containing provisions furnished under the contract of 1811, which casks, &c., it is alleged, were retained and used by the United States; and, "it is further alleged, that by the universal practice of the United States, under previous contracts, and by various contemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor." He further alleges that the United States refused, nevertheless, to pay for them, and he now claims as the value thereof the sum of $13,972 30, with interest under the contract in question. These supplies were to be delivered "at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, (Niagara and its dependencies excepted.") Neither time, place, nor person is named in this petition with regard to the delivery of these casks, &c. This is indispensable to enable the officers of the United States to inquire into the facts and prepare to meet the allegation.

Then as respects the custom of making separate compensation for them. That is not alleged to have prevailed with respect to contracts *similar* to this. The universal practice under previous contracts will give no sanction to this claim, unless the contracts were similar to this.

We may infer from the allegations of the petition, though it is not distinctly stated, that the casks in question were delivered at the posts or depots under the provisions of the third article of the contract, and that he did not issue them to the troops himself, as provided for in the supplementary agreement. This inference arises, because it is

alleged that the provisions and casks so containing them were delivered, and "never were returned to the said contractor." He did not, therefore, issue the provisions as provided for in said supplementary agreement, otherwise the casks would have been returned to him, and he would have been allowed twelve and a half per cent. for leakage and wastage, and one per cent. in addition for issue from the public deposits. He therefore received, for merely depositing in casks at the several military posts under this contract, at the rate of 13½ and 14 cents per ration, which is all he would have been entitled to if he had issued the rations himself before they were deposited in the public stores; and it is under such circumstances, when, instead of being called on to issue the rations in detail to the troops, he is merely required to deposit a supply of them at the same price, and is thus saved all the expense and labor and risk of issuing them, that he claims for the casks, &c., which for his own convenience he thinks proper to deliver them in, without alleging that he gave any intimation at the time to those who received them that he would claim them afterwards, or showing that he then or afterwards demanded them of the officer in charge of them.

Regarding this contract, and the circumstances attending the execution of it, as unlike the previous contracts under which the custom is said to have prevailed, of paying separately for those articles, and as depending altogether on themselves, and giving the ordinary and natural construction to the acts of the parties, no one would conclude that a contractor under such circumstances was entitled to additional compensation, when, instead of being required as he might have been to issue the provisions in rations, consisting of fractions of a pound of meat, bread, and flour, and whiskey by the gill, and vinegar and other things in still smaller proportions, the provisions are accepted in barrels and casks. The advantage is so manifestly on the side of the contractor by this arrangement, that when he gives no notice of a claim for the boxes, and sends no one to demand them afterwards, it is a legitimate conclusion, from a consideration of the whole transaction, that he was only too glad to get rid of his provisions in casks and boxes, and that the idea of a charge for these things was altogether an after-thought.

He says the boxes, &c., were used and retained by the United States. Doubtless these were used and retained to contain the provisions and supplies till issued, as he would have used them or something else for the same purpose. But such using and retaining, as well as the issuing of the rations, was for the benefit of the contractor. If he had objected at the time, both this retaining and using the casks, as well as issuing of the supplies contained in them, might have been exacted of the contractor.

But whether it is apparent or not from the statement of the petitioner, that the arrangement was for his advantage, he would not be entitled to more than the stipulated price in his contract, on account of a variation from it in which he acquiesced without giving notice at the time, or saying or doing anything from which such notice is implied, that he claimed anything on account of the change. Without something of this sort, the variation would be treated either as im-

material or as made by consent for the mutual convenience of the parties.

But, as already observed, this claim grows out of supplies furnished in pursuance of the third article of the contract providing for furnishing *supplies at fortified places and military posts*, in which article it will be observed the contractor is required to furnish supplies "in such quantities as shall not exceed what is sufficient for the troops to be there stationed *for the space of three months in advance*, in good and wholesome provisions, consisting *of due proportions* of all the articles forming the ration."

This is a distinct provision from that relating to the supply and issue of rations. It contemplates the deposit of supplies in large quantities in advance but in due proportion, and thereby enabling the government to preserve the uniformity in the rate of payment, but not necessarily to be issued by the contractor; but, when so issued, he is to be paid under the supplemental agreement separately for that service. Such deposits could not be made or preserved without casks and boxes; and the contractor who undertakes unconditionally to make them, undertakes to provide everything necesssary to accomplish that purpose, and the conditions only are excepted which are specified in the contract. He has taken care to stipulate that the government shall provide store-houses, escorts, guards, &c., (see arts. 7 and 8,) but not that the government shall provide or pay for casks, &c., to hold the supplies to be deposited by him in these store-houses.

As such things were essential and must be provided, and according to the account of the claimant were costly, it is not to be presumed they were not included in a contract so carefully considered.

Again: Of what use were such articles to the government after the supplies were taken from them, and what is to be the standard of value—the cost to the contractor, or the value of the old casks and boxes at the frontier posts in the wilderness on the St. Lawrence? If the latter, the contractor will take little by the allowance; and yet, certainly, if entitled to anything, it is only to the value of the articles after they had served his purposes.

If the court should consider the language of the petition as equivalent to an allegation that the government universally paid for casks, &c., separately under similar contracts, and under like circumstances —which is neither the allegation nor the fact, as I am informed—I should nevertheless insist, on the ground above stated, that the government was under no obligation to make such payment under this contract; and that the allowances heretofore made under similar contracts were illegal.

No. 1, *b*, is a claim similar to the foregoing, under the contract of February 25, 1813, without any allegation respecting the practice of the government in relation to previous contracts to support the claim. Such an allegation in respect to it would be contradictory of the statements preceding it. In addition, therefore, to all the objections against item No. 1, *a*, we have the fact admitted, that, under such contracts after 1811, the government refused to pay for these casks, &c.

No 1, *c*, is a claim for the destruction of these articles, under the 6th article of the contract providing for the payment of losses in

articles necessarily used in the transportation of provisions, alleging that these articles were so necessary, and that a certain amount were destroyed; but when, at what place, by whom, or how, is not stated with any degree of certainty or particularity.

The language of article 6th, relied on in support of this item, evidently referred to what is known to quartermasters and others as transportation—that is, wagons, horses, &c.

In one of the accounts rendered by Mr. Anderson, as may be seen in the proceedings referred to in the petition, he charges for certain hides which were destroyed by the enemy on the Canada frontier. The animals had been driven there, butchered, and fed to the troops; and as they could not have been driven without their hides, this loss was supposed to come within the article securing him against the loss of property used in the transportation of provisions. But this item was small, and the argument being suggestive of ridiculous ideas, it has been abandoned. It is, however, illustrative of the present claim, and I cannot distinguish between the merits of the two. If one is maintainable, both are, in my judgment; nor do I think the difference in value between the casks and boxes and the hides, at the place where they were destroyed, would be in favor of the casks and boxes.

No. 2. This item is for damages amounting to $20,000, on protested bills of exchange, drawn 27th October, 1814, by the claimant on the Secretary of War, and interest from the date of protest, on the ground "that by the terms and usage of his contract," he was authorized to draw, and he is entitled to the damages "by the practice of the United States in the case of protested bills." I shall make no question on this till proof is made of the allegations.

No. 3 is for discount on treasury notes. The allegation is, that he was compelled to receive pay in these notes at the time, on 5th September, 1815, and on 16th January, 1816, greatly below par value, and that he lost $22,214 20 thereby.

The 8th section of the act of the 24th February, 1815, authorizing the issue of treasury notes, expressly forbids what is here charged against the officers of the government. By that section such notes can only be issued to "such persons as shall be *willing* to accept the same in payment.

How the contractor was compelled to receive the notes is not stated. But as the law puts it altogether to his election to receive them or not, the government cannot be made responsible for any compulsion put upon him, which, so far from sanctioning, it expressly forbids. If, therefore, the compulsion was the work of the public officers, it was their own act, not within the authority of law, and one for which they were responsible. See Swartwout's case, 10 Peters, 95; 9 Clark & Finnelly's Rep., 279.

No. 4, *a b*, are both on account of the enhanced price of whiskey, (an article of supply contracted for,) alleged to have been caused by the government, after making the second contract, by the passage of the act of 24th July, 1813, laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. He alleges that in consequence of this act he was compelled to pay

$45,709 51 increased cost, or at the rate of 14½ cents per gallon for the whiskey furnished under said contract.

The question involved in this claim has been decided by the Supreme Court in the cases of Providence Bank *vs.* Billings and Prettman, 4 Peters, 514, and Charles River Bridge *vs.* Warren Bridge, 11 ib., 545. In the first of which, in reference to a conflict between the taxing power and a contract, it is held that government contracts with individuals are made subject to the taxing power of the government. And in the last case the principle is carried still further, and it is held that such contracts are made subject to the exercise of any and all the political powers of the government.

The first case and this claim are in all respects the same, both being cases seeking exemption from taxes in virtue of a contract with the government, on the ground that, having agreed in relation to certain specified matters, the government had no right to impose any further burdens than such as were contained in the contract. But such contracts are considered as if made between individuals in respect to general legislation, and that, so far as concerns contracts made with individuals by executive officers, is perfectly fair and just. Why should not the contractor in this case, for instance, contract with the Secretary of War for the supply of provisions for the army, as with individuals, subject to such legislation as the wisdom of Congress shall dictate for the good of the country?

There are other objections to this claim. It is manifest that the price of the article was affected to some extent otherwise than by the tax, as a comparison of the rates on the still with alleged variations in price will show. How much the tax affected the price of whiskey in 1814 would be a most vexed question at this day as in it are involved a multitude of considerations, as a supply and demand, &c. But what amount should be allowed the claimant would be still more perplexing, as his contract embraces the supply of various other articles; and it is probable that if the effect of the tax was to enhance the price of whiskey, it must have diminished the price of beef and breadstuffs, and other articles in the contract, yet more considerably.

With respect to items 5, 6, 7, and 8, I shall offer no objections till the proof comes in.

I shall read at the hearing some adverse reports of committees, the report of the Secretary of War, dated August 12, 1824, and the remarks of the Third Auditor on statements of differences, all to be found among the congressional papers referred to.

M. BLAIR.

IN THE COURT OF CLAIMS.

ON THE PETITION OF ELBERT ANDERSON'S ADMINISTRATOR.

Brief of the United States Solicitor.

The petition states that deceased was an army contractor during the years 1812–'13, and '14, under two contracts, one dated November 7, 1811, and the other dated February 25, 1813.

Twelve different claims are presented in the petition, but the evidence as offered, in the opinion of the petitioner's counsel, supports only four of them, and therefore the others are abandoned.

Those now presented are—

1. For the value of certain casks, &c., in which a portion of the rations furnished under both contracts were contained; which casks, &c., it is alleged were not returned.

2. Damages for the non-acceptance and non-payment of two drafts.

3. For a balance on the settlement; because, although the amount was paid in treasury notes, they were received at their nominal value, which was more than their true value.

4. For the difference in the price of the whiskey supplied under the second contract, caused by the act of Congress of the 24th of July, 1813, taxing stills. (3 Stat., p. 42.)

I. *The claim for casks, boxes, &c.*

This claim is stated in the petition as follows:

"That by the terms of said contract, dated the 7th November, 1811, the said Elbert Anderson, deceased, agreed with the United States to furnish provisions for the army of the United States in and adjacent the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specifically enumerated in said contract. That the said contractor, *in addition* to the said provisions, did furnish to the United States a large number of casks and packages, boxes and barrels, wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor. That the value of the said casks and packages, so furnished and retained by the United States, was $13,972 30.

"That by the universal practice of the United States under previous contracts, and by the various contemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor.

"That the United States have never allowed the said contractor any compensation for the casks, &c., so furnished to and used by them; and this claimant, therefore, asks compensation and indemnity of the United States in the said sum of $13,972 30, together with interest on the same from the date at which the said claim accrued."

Similar averments are made respecting certain casks, &c., furnished in executing the contract of 25th February, 1813, for which compensation is claimed to the amount of $10,921 90, making the claim on account of these articles in the whole of $24,894 20.

The proof offered to show that such articles were furnished, consists, first, of certain accounts which the witness Penoyer testifies are copies of those forwarded to the accounting office of the War Department, on which accounts the government is charged with sundry casks of pork and beef, barrels of flour, casks of whiskey, boxes of candles, &c., &c., deposited at various military stations; and

secondly, of a paper which the same witness testifies is in the handwriting of one John Abbott, who, Penoyer says, was at the time a clerk in the accountant's office. Penoyer further testifies, that in this paper, which purports to be a statement of differences between the charges of Anderson and the allowances of the accountant under the second contract, there is no disallowance of any charge made on account of the meat, &c., forming the component parts of the rations claimed to have been deposited, but only of the casks, &c., in which those articles were contained.

This statement of differences admits nothing in respect to the delivery of the casks, but because it admits the delivery of the meat, &c., which is usually transported and delivered in such articles, it is inferred that the casks must have been deposited in the public store houses. If this be conceded, the statement applies only to the deposits made under the contract of 1813; but the statement of differences, and the settlement to which it refers, only admits the deposits of the meat, &c., forming component parts of rations with which the government is charged by allowing that charge, but rejects the charge for casks, &c., and therefore does not admit the deposit, or any other fact essential to create the liability of the government for casks, &c.

But it is argued that the admission of the receipt of the contents of the casks, &c., carries with it a presumption that the casks were also deposited, because it is not likely that the process of transferring the contents to other vessels was resorted to; and therefore, from the nature of the transaction, the admission as regards the contents admits the deposit of the casks, &c., and puts us on the proof of the return of the casks. The claimant relies, therefore, not upon any distinct admissions or proof of the fact in question, but asks the court to infer its existence from the nature of the transaction. But when the court considers the nature of the transaction, the mere fact that certain casks, &c., belonging to Anderson, containing the rations which he was under contract to supply, were left in the public stores to remain there until the rations were issued, does not prove that these casks, &c., did remain in the stores after that time, or were improperly withheld from him by the public officers, and affords no presumption whatever that they were so withheld; and that is what is charged by the claimant. The sort of possession by the public storekeepers, which is to be inferred from the facts in proof, was a rightful possession. To charge the government, supposing it could be charged, for any unauthorized act on the part of such officers in improperly retaining such casks, something more must be shown. It is not the case of a sale and delivery, where it is enough to show the delivery to put the vendee on the defensive. On the contrary, it is insisted that the casks were not included in the contract, and were not sold, and Anderson's property in them continued after the deposit. In such a case further evidence is indispensable to show the conversion of the property by the United States. The transaction is properly characterized by claimant as a bailment, and it is of that kind called in the books a deposit, which is defined by Justice Story p. 47, to be "a bailment of goods to be kept by the bailee without

reward, and delivered according to the object and purpose of the original trust." Admitting, for the sake of the argument, that the casks were the property of Anderson, and looking to the contract for the nature of the trust imposed on the United States with respect to them whilst in the public stores, we shall find that they were there wholly for Anderson's benefit and convenience; for, by the terms of the contract, he was bound to make and keep and "account for" the deposits, and to transfer them from post to post, if required; the only responsibility assumed by the United States being to allow 12½ per cent. for wastage, leakage, and damage of whatever nature, excepting only those occasioned by fire, water, an enemy, or the troops of the United states, and to supply storehouses. (3d and 8th arts. original, and 3d art. supplemental agreements.)

There is no evidence offered by the claimant from which the court is authorized to infer that this trust was ever violated by the United States. The receipt of the casks is no violation of it, but is merely evidence of its creation, and the presumption of law, in the absence of proof to the contrary, is, that it has been faithfully performed.

In this state of the proof, it is wholly unnecessary to dwell on other considerations, but a glance at a few others may serve to illustrate the subject.

It is alleged in the statement of this claim above given from the petition, "that by the *universal practice of the United States under previous contracts*, and by the various contemporaneous decisions of the heads of departments, the United States were bound to allow separate compensation for such casks and packages." This averment, it was maintained by the claimant's counsel in the argument on the petition, was an averment that by usage, in reference to such contracts, the government was bound to pay for casks, &c., in cases like the present. The only proof offered in support of this allegation is of an allowance made by Mr. Monroe to Mr. Byers, on a contract of a subsequent date to those under consideration, the propriety of which allowance Mr. Monroe himself undoubtedly questioned, as appears by his memorandum on the order, in which he says he was induced to make it by equitable considerations, thus showing that the case was not according to usage, but was exceptional, and not to be drawn into precedent. And so it was expressly declared by Mr. Calhoun, when it was cited in support of this claim, when he said that no other instance had ever occurred in which such an allowance had been made. A practice had grown up under the contract system of paying the contractors for the casks, &c., delivered to the quartermaster's department to be issued to troops on the march. But even this he considered objectionable, and an allowance under it only justifiable because it was a usage. But this custom did not extend to deposits made at stations, forts, &c., and had never been so applied but in the exceptional instance of Byers, where, whilst the allowance made nominally for casks, &c., deposited, it was in fact made, as confessed in the memorandum of Mr. Monroe, on other considerations. No attempt is made to refute this statement of Mr. Calhoun. No instance of the making such an allowance is shown either to Mr. Anderson himself, who, it appears, by exhibit No. 1 to Penoyer's deposition, had been

an army contractor for many years before making the contract of 1811, or to any other contractor. The allegation of such usage is therefore not only unsupported, but is disproved.

Mr. Calhoun may be wrong in his opinion respecting the right of the contractor to the pay for the casks, &c., turned over to the Quartermaster's department, containing rations to be issued on the march; and also in the opinion he expresses that the property in the casks was incident to the rations, and passed to the United States with the rations. But this erroneous construction of the contract, if it be so, does not affect his testimony as to the fact that the usage was not to pay for casks, &c., deposited. The usage he speaks of is perhaps inconsistent with his opinion as to the property in the casks, but is not at all inconsistent with the usage not to pay for casks deposited, or with the relations of the parties as above considered. For as the contractor was not bound to issue rations on the march, or to transport them with the troops, so as to enable the commissary to issue them, but only to deposit them at certain stations, and to issue them at such stations when required, when it became necessary to transport provisions from such stations to feed the army on the march, the government had no right to take the casks of the contractor for such a purpose, without paying him for them, especially as in most cases they would be emptied and left by the road side, and they were therefore bought by him. Whereas, when issues were made at the stations, whether by the contractor himself or his successor, or by the commissary, no use was made of the casks not contemplated in his contract and assented to by himself, and therefore there was no necessity to buy the casks of him. The customs of the department are therefore strictly in accordance with legal principles, and there is no proof whatever that there was the slightest departure from these customs and principles in Anderson's case.

There is no evidence tending to show that Anderson was prevented from removing any of the articles in question from the storehouses, after the purpose had been effected for which they had been left there, or that any other use was made of them by the government but that for which he had left them. There is nothing, indeed, to repel the presumption that he obtained the actual possession of them all in due time, but his naked assertions to the contrary; and this assertion has always been made without any statement which would attach any blame or liability to the government or its officers for his failure to receive them.

But inferring that the government was liable to him for the price of the articles on the delivery of them, unless it was alleged and proved that they had been returned to him, he has never averred any request or demand for them at the stations where they were emptied, within any reasonable time after they had been emptied, or any neglect or refusal on the part of the officers of the government to deliver them to him on such request.

But if there had been such an allegation, and proof to support it, this would not have rendered the government responsible. Because, if the contractor had a right to the casks when emptied, and the officer had violated his rights in refusing to surrender them, no sanction

by the government can be implied to their conduct in this respect, so as to make their *laches* the *laches of the goverenment*, and their *conversions* the act of the government; for laches cannot be imputed to the government. (U. S. *vs.* Kirkpatrick, 9 Wheat., 720; U. S. *vs.* Nicholl, 12 ib. 505; U. S. *vs.* Vanzandt, 11 ib. 184.) All of these were cases in which it was sought to make the government responsible for the supposed misconduct of officers. See also the case of Cassius M. Clay decided by this court.

But even if the court should be of opinion that the claimant was entitled to payment for the casks, there is no evidence on which the court could estimate the damages. The value of new articles of the kind might be found out in the city of New York; but these were old, and no doubt damaged from being transported to remote frontier posts, over bad roads, where there was no market for articles of the sort. Nothing is shown in the evidence as to the condition of the articles in the places where they were left, or indeed anything relating to their value but the first cost in New York. Any finding on this point, therefore, must be purely guess-work. And again, as the number of these articles shown by the abstracts with which the United States is supposed by the claimant's witness Mr. Choate, to be chargeable, I confess my inability to understand from the papers produced how he arrives at his conclusions, and he gives no explanations.

II. *Damages for the non-acceptance and non-payment of the two drafts.*

This claim is stated in the petition as follows:

"That by the terms of both the above-mentioned contracts, to wit, by the sixth article of the same, the United States undertook and agreed as follows:

"And that if any balance shall in any settlement of the accounts of the said Elbert Anderson from his heirs or executors be found to be due to him on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid, and that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators. That during the months of July and August, 1814, the said contractor transmitted to Washington his accounts for rations issued under the aforesaid contracts; that by the said accounts he was then largely in advance to the United States, to wit, in a sum exceeding $200,000. That on the 15th October, 1814, he transmitted to Washington a further account, showing a balance due him by the United States of $263,004 55½. That during the months of July, August, September, and October, the United States refused or neglected to settle the said accounts so transmitted; and that the said delay in settling the accounts of the said contractor was unnecessary and unreasonable. That when the said accounts were finally settled, the balances due to the said contractor as aforesaid were found to be correct, and were paid to an amount exceeding $200,000. That on the 27th day of October, 1814, the said contractor made two several drafts on James Monroe, the Secretary of War, as by the terms and usage of his con-

tract he was authorized to do, the one for $150,000 payable at sight, and the other for $50,000 at 15 days' date. That the said bills were not honored or paid by the United States, as they should have been, but were returned protested for non-payment. That the said Elbert Anderson was thereby subjected to great loss, and that his credit was much impaired, and that he claimed of the United States the usual per centage of damages allowed by the law merchant, and by the practice of the United States, in the case of protested bills; and that the United States have refused to allow the same; wherefore, the claimant asks that the said damages be allowed him to the amount of 10 per cent. on the amount of the drafts protested; that is to say, $20,000, together with interest on the same from the date at which the said claim accrued."

This must be taken as an allegation that the United States had agreed to accept and pay bills under the circumstances stated, in order to sustain the conclusion that the non-acceptance and non-payment charged, subjected the government to the payment of the damages claimed. There is certainly no such undertaking in the *terms* of the contract. That stipulates only that payment shall be made on the settlement, and that the settlement shall not be unreasonably delayed. So that if the claimant was authorized to draw at all, it must be shown otherwise than by the *terms* of the contract. And the attempt was made to imply such authority from the fact that a number of drafts had been accepted and paid in less time after the receipt of the accounts than had elapsed after the forwarding of those accounts on which the drafts of 27th October, 1814, were predicated. But it is not shown that these payments were made on settlements. It is apparent, indeed, that these payments were made in advance of the settlements, and were advances which the contract contemplated. Anderson, having ceased to be contractor at the date of the drafts of 27th October, had no claim to the money except on settlement; and although he was on the most friendly footing with the accountant and Secretary, as evidenced by the letters in evidence, the fact that extensive forgeries had been detected in the vouchers forwarded with his abstracts, (see Ex. 3, p. 256,) and that both Generals Scott and Gaines had made charges affecting the correctness with which his agents had conducted the business, (Ib. pp. 247, 265,) and that General Gaines had even questioned the contractor's integrity, admonished the department to be careful not to let him overdraw, and made it proper to pass on *his* accounts before payment.

The right to do this was expressly reserved in the contract, and not here questioned. But it is argued that there was unnecessary delay in doing it merely because payments had been more promptly made before, without showing that any of such payments were made on settlements, or under similar circumstances. The statement that no other bills had been refused acceptance and payments is shown to be erroneous by the letters of the claimant in exhibit 3, where a correspondence is shown in reference to two other drafts which were refused payment, one dated 1st March, for $150,000, (Ex. 3, pp. 215,) and the other 26th February, 1814, for $87,500, (Ib. 231.) It will further appear, (Ib. 214,) that the contractor regarded the acceptance

of such drafts not as a right incident to his contract on the forwading of his accounts even whilst he was engaged in making purchases, and before the expiration of the time of his contract, but as discretionary with the Secretary, and therefore, in the letter forwarding these accounts, he usually explained fully his financial condition to show the necessity there was to put him in funds for the sake of the public interest, and these representations and drafts he calls in the letter cited "feeling the Secretary's pulse," or merely sounding him, and not the demands authorized to be made, and to which, therefore, the contractor felt assured there would be but one response. And it appears as well by the letters in relation to the drafts of February and March, as in respect to those in October, written after the refusal, that the drafts were merely modes of application for money based on the accompanying accounts and statements addressed entirely to the sound discretion of the Secretary; because, although the contractor expresses his disappointment, or "scolds," as he expresses it to his associate Townsend, in these letters, he nowhere claims any damages on account of the refusal as for a breach of contract; but, on the contrary, as in his letter to Mr. Monroe, (p. 387,) he asks only for the settlement promised, and for the *balance* which shall appear on such settlement.

It appears, also, that the accountant, by letter of 20th October, and the Secretary, by letter of the 31st, informed him that no payments would be made till the settlement. These officers both speak of the delay as necessary and proper, and treat it as with the contract. And Anderson does not in his answers controvert this in any way.

2. But if it be assumed that there was authority to draw, and the Secretary bound to accept and pay, there would still be no foundation for the claim of ten per cent. damages, or for more than nominal damages.

It is not pretended the bills were negotiated, and that the damages claimed were paid by the contractor to the payee, and the "law merchant" does not ordinarily allow damages to the drawer which he has not paid. The only cases cited, on this part of the case, by claimant's counsel, are those of the United States *vs.* Bank of the United States, (2 Howard, 721,) and Rollin *vs.* Stewart, (25 English Law and Equity Reports, p. 341), have no application to this. The first was on a bill which had been made and negotiated by the United States, and the damages for non-payment were claimed by the bank as the *bona fide* purchaser and holder of the bill.

The case of Rollin *vs.* Stewart was a suit by a *trader* against a *banker* having his funds, who had refused to pay his checks. The court permitted the jury to give smart-money, because they were at liberty to infer merely from the relations of the parties that the *banker's* conduct was injurious to the *trader's credit*, and the smallness of the amounts for which payment was refused, was therefore an aggravating circumstance in the case.

In this case the defendant is not a banker, and the claimant is not a *trader*, and the amounts are not so trifling as to justify the conclusion, from the non-payment by even the party's banker, that the drawer was insolvent; and it was only on this state of the case

that damages could be given without proof of special injury, which is neither alleged on the petition, nor proved by the evidence in this case.

III. *For the depreciation of the treasury notes received by the contractor.*

This claim is stated in the petition as follows:

"That by the terms of the said contracts the United States undertook and agreed to pay for the said rations so furnished a certain price in money. That the contractor was compelled to wait ten months, from the period at which his accounts were tendered for settlement, before payment of the balances due by the said accounts was tendered to him, and that he was then compelled to receive the said payment in treasury notes, at the time of such receipt from 8 to 11 per cent. below par, and that he thereby suffered great loss, to wit, the sum of $6,237, being 11 per cent. on $56,700 received in treasury notes on the 5th day of September, 1815, at which date the said notes were 11 per cent. below par, and the sum of $15,977 20, being the discount at $8\frac{47}{100}$ per cent. on $188,631 91, received in treasury notes on the 16th day of January, 1816. That the said contractor never received any indemnity for the said loss, wherefore this claimant asks compensation of the United States in the sum of $22,214 20, together with interest on the same from the date at which the said claim accrued."

The proof shows that treasury notes were not equivalent to specie on the 5th September, 1815, on the 16th January, 1816. The difference being in September about 9 per cent., and in January about 8 per cent., and that they were worth a premium on the New York bank notes, which actually constituted the currency or money at the time—specie being bought and sold as merchandise.

The act of February 24, 1815, (3 Stat., p. 215,) under which the notes in question were issued, authorizes "the said treasury note to be issued at the par value thereof in payment of services, of supplies, or of debts for which the United States are or may be answerable by law, to such person as shall be willing to accept the same in payment."

If it were an open legal question whether Anderson accepted payment in these notes willingly, having accepted them under this law, his application for them, which appears in his letter-book at p. 292, would leave no doubt about the fact; and it is well settled law that the acceptance of a note in payment of any account discharges the debt. (Sheehey v. Mandeville, 6 Cranch, 257; see also cases cited 2 Parsons, 134.) That was a case where the note was unpaid. When the notes and interest thereon have been paid in full as in this case, there is still less reason for saying there has not been full payment of the debt. This assumes that all contracts with individuals or governments for indulgence are invalid unless paid for at the market price of specie, and that when notes are given for debts, unless the notes will command the specie to the full amount of their face, the debtor is still liable for the difference, although he may subsequently have paid the notes in full.

The case of Cheever, for the relief of whose widow, Mrs. Huntington, an act was passed February 10, 1849, (9 Stat., 761,) and of Byers, for whose relief an act was passed March 3, 1823, are cited as precedents for the relief claimed in this case.

But the report of the Secretary of the Treasury, Mr. Spencer, in 1843, which is made part of the report of the House committee in favor of Cheever, shows that the acts in question were passed on entirely different considerations from any presented here. Mr. Spencer shows that Byers and Cheever, who were army contractors, to whom treasury notes were issued as advances on their contracts at their par value, informed the Secretary, Mr Monroe, that, in consequence of the depreciation of these securities below the currency in use where their operations were to be made, they could not make use of them; and upon these statements the Secretary authorized Byers to sell the notes, and instructions were given to Cheever which Mr. Spencer demonstrates were in effect the same as those given to Byers. These were not cases of the payment of debts in which the notes were accepted willingly by Cheever and Byers; but, on the contrary, were cases where these contractors had informed the Secretary that they could not make use of the notes sent them at their par value, and where the sales made at less than the par of the currency were for account of the United States by contract with the Secretary of War.

Moreover, the loss refunded by the act of 1849, as shown by the account made by the Third Auditor, was not the difference between treasury notes and gold and silver, but only the difference between such notes and the current bank notes of New York, where Cheever had succeeded Anderson as contractor, and where both of them had dealt in bank bills as money, borrowing the notes of the banks to make their purchases on the credit of their contracts with the government. In Cheever's time it appears the treasury notes were not of equal value with the bank notes he borrowed, and it was this difference which he asked to be returned to him, and which was returned to him by the act cited. But in Anderson's time the treasury notes were worth more than the bank notes which he borrowed, and, on the principle of Cheever's case, he ought to return to the government the premium of one and a quarter per cent. received on the treasury notes issued to him.

The whole argument for this item rests on the notion that because the constitution declares that nothing but gold and silver shall be a lawful tender in payment of a debt, a payment in anything of less value in the market than gold and silver at the time is *pro tanto* no payment.

I have shown that this, as a legal proposition, is not sustainable, and it could be easily shown to be most pernicious and unequitable in its operation on the government. Every one knows that debts contracted in the flush times which precede suspensions are more than discharged in equity by payments in current bank notes after suspension; because experience shows that such notes will not be current when they have depreciated more than 20 per cent., and although this reduced to specie would be much below the face of the note, yet even so reduced, it represents an absolute value greatly beyond the full amount of specie in flush times, and will buy more of every kind

of property than the whole amount would have bought. This, which every one knows to be true at present, was equally true in all past suspensions, and the cause of it is such as necessarily to make it true in all cases. It is, that the suspension annihilates absolutely a vast portion of what was previously recognized as currency, and as what remains has to do the office of the whole as the representative of value, that remainder is enhanced to the value of the whole. And the provision of the constitution which forbids any thing being a lawful tender but gold and silver, does so in furtherance of the hard-money policy which its framers were so solicitous to establish and perpetuate, and not because there is any natural equity in the exaction of the bond by a creditor of his debtor in times of suspension. Indeed it was foreseen that, without such a constitutional prohibition, the policy which it was so important to adhere to would be sacrificed, under such circumstances, to natural, equitable impulses in the legislatures.

IV. *The difference in the price of whiskey caused by the act of 24th July,* 1814, *taxing stills.* (3 *Stat., p.* 42.)

This claim is stated in the petition as follows: "That by the terms of the said contract, the said Elbert Anderson, deceased, undertook and agreed to furnish to the troops of the United States, whiskey at a certain price, being one of the component parts of the rations to be furnished under the said contract. That Congress on the 24th day of July, 1813, passed a law laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. That the said law went into operation on the first day of January, 1814, and remained in operation throughout the whole remaining term of the said contract. That in consequence of the passage of the said law, the price of whiskey was enhanced to the amount of twenty cents on the gallon; and that the said enhanced price of whiskey continued from the date of the passage of the said law, to wit, the 24th day of July, 1813, throughout the whole term of the said contract. That from the said 24th day of July, 1813, up to the first day of January, 1814, the day on which the law went into operation, the said contractor furnished under his contract of 25th of February, 1813, 89,193 gallons of whiskey. That, owing to the said enhanced price of whiskey, the contractor was compelled to pay $12,932 99 increased cost of the said whiskey, being 14½ cents a gallon for the amount of whiskey furnished as aforesaid.

"That from the said first day of January, 1814, up to the termination of his said contract, the said contractor furnished to the United States, 226,045 gallons of whiskey; that owing to the price of whiskey enhanced as aforesaid, he was compelled to pay $32,776 52, the increased cost of the said whiskey being 14½ cents on the gallon for the amount furnished as aforesaid. That the said Elbert Anderson, deceased, claimed that he should be indemnified by the United States for the great loss so entailed upon him by the act of the United States, and that the United States have always refused or neglected so to indemnify him; wherefore, this claimant asks compensation and in-

demnity of the United States in the sum of $45,709 51, together with interest on the same from the date at which the said claim accrued."

The proof offered in support of this item tends to show only that there was a rise in the price of whiskey after the passage of this law, and the claim is for the amount of this rise, without showing either that the rise was due exclusively to that cause, or that Anderson, in fact, paid the difference, and without making any allowance to the United States for the effect which the tax on whiskey must have had in preventing the manufacture of whiskey, and so reducing the price of grain, and thus reducing the cost to him of all the other component parts of the rations furnished by him to the United States.

1. The claimant proceeds on the idea that he may assume that the tax in question was a specific duty equivalent to the differences in the price of the article shown in the evidence. Whereas the price has no necessary connexion with the amount of duty, and might have been less after than before the imposition of the duty. The evidence shows that it varied after the imposition of the duty, and rose before any duty was imposed. The tax not being direct and specific on the whiskey, but on the means of producing it, it would require complete and authentic statistics to estimate the rate of the tax per gallon, a computation not attempted in this case, and perhaps not practicable.

2. There is no evidence that Anderson bought the whiskey after the tax went into effect, or otherwise paid the tax. The law was in force for but five months of his contract, and he was probably supplied under contracts previously made; and, if so, his sub-contractors lost the difference caused by the rise. There is no proof how this was, but the probabilities, looking at his course of dealing, are rather that others lost the difference than that he did.

3. There is no proof as to the effect of the tax on the other component parts of the rations furnished by Anderson. And as it is only because it was calculated to diminish the supply, that it affected the price of whiskey, it must have had a corresponding effect in reducing the price of grain, upon the price of which depended the cost of the meat, bread, &c., which formed the other component parts; and allowance should be made for this, if the enhanced price of whiskey is to be charged to the government. And this too was considerable; at all events, either from this or some other cause, Anderson's profits on his contract were so great, that he charges General Scott and other officers, in his letter on p. 265, with being actuated by malice towards him on account of the great fortune he was supposed to have made on it.

4. But if the amount of the tax on whiskey per gallon was ascertained, and it was shown how much was paid by Anderson on the whiskey supplied to the army, he would not be entitled to have it refunded. He claims exemption on the ground that the effect was to diminish by that amount (stated by him to be 14½ cents per gallon) the contract price, and thus to vary or violate the contract, which, it is insisted, it is equally inadmissible for a State as for an individual to do.

The question presented is one of contruction; whether the contract

either expressly or by necessary implication exemps from taxation the property which the contractor buys to fulfil his contract with the government? It is contended that the contract does exempt the whiskey from taxation by necessary implication, because it stipulates that the government shall pay say 50 cents a gallon for the whiskey, whereas it pays in fact but 35½ cents if subject to taxation. This is conclusive, if this contract is to be contrued as comprehending all the relations of the parties; and on this construction it would equally forbid the collection of the tax, whether imposed by a law passed before or after it was entered into. But if it is to be construed with reference to its object and to the relation of contractor established by it to the government, and not to extend to or modify contracts made for other objects, as for example, that which established the relation of citizen and government between them, it is equally immaterial whether the tax is imposed before or after the making of the contract; because, being made without reference to this relation, it does not limit any present or future exercise of the taxing power founded on this relation.

It is not contended that if the act had been in force when the contract was made, that if the contract is so worded as to imply any exemption from the tax. This concedes that it was made without any saving whatever on account of taxes, and renders it unneccessary to recur to the words of the contract to demonstrate that it contains no allusion to the subject, it follows that it was made subject to the existing law which allowed the government to tax this other property at its discretion. Nor is there anything peculiar in this contruction arising from the connexion of the government with the contract. It is precisely as if one man had bargained with another for the sale of articles at a particular price, who should also be bound to the other party by another contract, for a different consideration, to pay him a per centage on such articles. It would not be assumed that the per centage was included in the price. As if one should come to a tenancy which obliged him to pay as rent $10 a head for the horses raised on the farm to another who was under contract to buy them of him at $100 each; it would scarcely be thought an answer to the demand for rent to say that it was inconsistent with the contract for the sale of the horses, and would, if enforced, reduce the price agreed to be paid by the contract of sale, unless there was some language in the contract of sale which showed that the contract for rent was considered in making it, and the rent taken into account in fixing the price.

The obligation to pay taxes is annexed to every tenure in consideration of protection, and, like the rents reserved in the case supposed, is assumed by the tenancy, and is unaffected by other contracts with the government which do not profess to limit or release it.

The Supreme Court gives this construction to a contract with the government in the case of the Providence bank *vs.* Billings and Pittman, 4 Peters, 514. The State of Rhode Island granted a charter to this bank in 1791, and in 1822 imposed a tax upon it at the rate of 50 cents upon every $1,000 of the stock. The bank denied the legality of the tax, on the ground that it was a violation of the contract or charter, because, in this way, burdens were imposed on it additional

to those contained in the charter, which, if allowable, would authorize the State to destroy the bank indirectly, when it could not rescind or modify its charter directly.

But the court said there was no stipulation in the contract not to tax the stock, "and the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in maintaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear. The plaintiffs would give to this charter the same construction as if it contained a clause exempting the bank from taxation on its stock in trade. They contend that it must be implied, because the power to tax may be so wielded as to defeat the purpose for which the charter was granted.

"The proposition is that a power which is in itself capable of being exerted to the total destruction of the grant is inconsistent with the grant, and is therefore impliedly relinquished by the grantor, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal, and therefore its truth cannot be admitted in these broad terms in any case. We must look for the exemptions in the language of the instrument, and if we do not find it there it would be going very far to insert it by construction. The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle which has its foundation in society itself. It is granted by all for the benefit of all. It resides in government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature." (P. 563.)

This decision covers fully the question and the argument presented by the claimant in this case. The question here, as in the Providence bank case, is, whether property which is the subject of a contract between citizens and the government is impliedly exempt from taxation? And the argument is, that if it be not exempt the government may, by taxing it indirectly, vary its contract, when it is admitted that it could not modify it by any direct action. But the court says, "*we must look for the exemption to the language of the instrument;* and if we do not find it there it would be going very far to insert it by construction.

The example used by the court, on p. 562, to expose the fallacy of the argument when used by the bank, is equally applicable to this case. It is conceded on all hands, says the court, that land granted by the court may be taxed so as to destroy its value, without any one supposing the contract made with the grantee that he should enjoy the profits was violated.

The fact that the government is vendor in this illustration does not

prevent its application to this case in which it was vendee; because the effect of the tax on the individual contracting with the government is the same whether he be vendor or vendee. If he is vendor, he is required to advance the amount of the tax to the government before the sale. If vendee, he must pay it afterwards; and if the contract of sale by the government was a guarantee against taxes, it is equally violated by the requiring such payment after as before.

M. BLAIR.

IN THE COURT OF CLAIMS.

ANDERSON, administrator of ANDERSON, claimant.—No. 4, general docket.

Brief for the claimant upon the solicitor's objections in matter of law.

The contracts upon which this claim arises will be found at pages 9 to 17, inclusive, of the petition.

There are divers items embraced in the claim wholly independent of each other in matter of law and fact, though all growing out of the same contracts. There are others which are identical in character and principle, depending upon similar facts and like stipulations, but founded upon or growing out of the two contracts respectively.

The first in order in the petition and upon the solicitor's brief are the items No. 1, *a* and *b*; the former arising under the contract of 1811, the latter under that of 1813. They are for the value of certain casks, barrels, &c., in which the claimant's intestate made certain deposits of quantities of provisions, according to the exigencies of the third article of each of the said contracts, respectively, (petition, pp. 10 and 15,) and which said casks, barrels, &c., were retained and used by the United States, and were never returned to the contractor.

To the petition, in respect of these items, the Solicitor objects—

1st. *That "neither time, place, nor person is named, with regard to the delivery of these casks, &c."*

This is rather an objection of form than of substance. If it should prevail it would lead, in this and similar cases, to a very irksome and expensive prolixity in the petition.

But there does not seem to be any ground whatever for it in the present case. It is apparent that the best evidence of deliveries in question must be in the possession of the government. Those deliveries were made at public posts by official order; and it is not in the nature of things that there should be any difficulty in the way of taking issue for want of further specification, or through apprehension of any surprise. It is not suggested by the solicitor that *any* casks or barrels so placed on deposit were ever returned to the contractor. On the contrary, he insists that this was never in the contemplation of the parties. The official accounts, therefore, of all such deposits under these two contracts must exhibit all the desired particulars.

2d. He objects that the allegation of usage made by the claimant in support of his demand for the value of the casks, &c., is insufficiently

made, because, although it is alleged (at page 2, petition) "*that by the universal practice of the United States under previous contracts, and by the various contemporaneous decisions of the heads of departments, the United States were bound to allow separate compensation for such casks, &c.,*" yet it is not distinctly stated that such "previous contracts" were "*similar* to this."

It is submitted that the fair and reasonable construction of the petition leaves no ground in point of fact for this criticism, and that in matter of law it is immaterial at this stage of the cause. If the fact of usage be material, (which will be considered hereafter,) the court will not reject the proof of that fact, any more than of any other fact, whether imperfectly averred or not, which may tend to the just decision of the claim.

3d. The remaining objections urged against these items purports to go to the root of the matter, and to deny all liability whetever in the premises.

It is objected, first, that the contract does not expressly assume such liability; and the absence of such assumption is relied on as raising a presumption against any *assumpsit* in law.

It is objected, secondly, that, upon a general view of the whole contract, and of its operation, it appears that the contractor must have looked for and found his compensation for the value of the casks, &c., containing provisions not issued by him, in the dispensation from the trouble and expense of issuing the rations, as he might have been required to do.

It is objected, thirdly, that the petitioner shows merely a variation from the contract, for which he is not entitled to any additional compensation, because he acquiesced in it, and gave no notice of any claim for such additional compensation.

It is objected, fourthly, that he bound himself to make these deposits when required, and that they could not be made except in casks, &c., and therefore that he bound himself to furnish the casks, &c., without further compensation.

It is objected, fifthly, that he made no demand for the casks, &c., after their contents had been discharged.

And, finally, it is objected that, whatever usage may have prevailed with respect to similar contracts prior to and at the time of entering into this contract, it is plainly unlawful to allow the petitioner any compensation whatever for the casks, &c., in the present case, and such allowances upon the other contracts referred to were themselves unlawful.

Other suggestions upon the brief are not noticed here, because they are supposed to be inapplicable to the present stage of the case.

1. It is true that the contract does not expressly stipulate that payment shall be made for the casks, &c. But the supposed presumption by no means follows.

The principal duty undertaken by the contractor was "*to supply and issue*" rations. It was an incident to the discharge of this duty that the contractor should remain in possession of his casks, barrels, packages, &c. This was not necessary to be expressed. It was inherent in the very nature of his undertaking. This is admitted by

the solicitor (p. 2) when he says, "*He did not, therefore, issue the provisions as provided, &c., otherwise the casks would have been returned to him,*" *&c., &c.* Accordingly, it is not under this main branch of the contract that these items arose. But it was also stipulated (Art. 3) that he should, when required, make deposits at fortified places and military posts of supplies, not exceeding three months in advance, for the troops, &c., at such places and posts.

As to these deposits, it was provided by supplementary articles, appended to each of the contracts, (see petition, pp. 12 and 17,) that the government should have the right to call upon the contractor to issue them in rations, in which case he should be allowed 12½ per cent. for wastage, &c., and one cent for every ration, as compensation for issuing the same.

This is the branch of the contract under which these items arise.

Now, if the omission to stipulate that the casks, &c., should remain the property of the contractor, in the other branch of the contract, did not (as is conceded) affect his right to that property, how could it affect such right under this branch? Although not *bound* to issue the rations from public deposits *at all events,* yet he was bound to do so when required—and this was at the option of the government. When so issuing them, would he not, in like manner, be entitled to the casks, &c.? This is also conceded. (Solicitor's brief, p. 2.) But how entitled, if they were not his property? Not by way of compensation, for it is expressly stipulated that the additional *one cent per ration* shall be his full compensation for that service. It is clear that, as to this question, there is no distinction between the cases of issuing generally, issuing from deposits, and depositing without issuing. In neither case could the contractor claim the casks, &c , except as *his property.* In the first and second cases, it is conceded that they were his, notwithstanding the silence of the contract. The same principle makes them equally his in the third case.

2. The second objection is not only met by the suggestions already made, but by others which readily occur.

It assumes that the omission to call upon the contractor to issue the rations was a benefit to him; that it dispensed him from a burdensome duty. This assumption is not warranted by the contract. He had no duty to perform with regard to those deposits until specially called; and when the duty thus arose, the compensation for it was specially provided for. It is to be presumed that the compensation was fair and reasonable. The omission to impose the duty simply deprived the contractor of the opportunity of earning this additional fair and reasonable compensation. If he had earned it, the property in the casks, &c., would not thereby have been changed; neither can the want of opportunity to earn it affect that property; nor is the issuing of rations, or the compensation therefor, in any manner involved in the present question.

3. It is not perceived how the objection as to "variation from the contract" and "acquiescence," and failure to give notice of claim for additional compensation, can apply to these items of claim. There is no variation from the contract. Nothing like it is pretended by the claimant. On the one hand, if by the usage with reference to which the contract was made, the casks, &c., if not returned, were to be

paid for, that is no case of variation. On the other hand, if the contract neither expressly nor impliedly assumed such liability for the United States, it is equally no case of variation, but simply the case of an implied assumpsit upon the use and enjoyment by the United States of property belonging to the contractor not embraced in the contract. In such a case no notice could be necessary.

4. This objection (in connexion with which the 5th may be considered) asserts that the 3d article of the contract, in binding the contractor to make deposits of supplies, bound him to provide everything necessary to accomplish that purpose; and concludes that whatever was thus necessary became the property of the United States. Without stopping to define more accurately the principle to which the first member of this argument refers, it seems enough to deny the conclusion founded upon it. It would by no means follow that property of the contractor would become property of the United States merely because it was necessarily used by the contractor in fulfilling his contract as to other property. The contract was for rations. The particular stipulation of the contract was for the deposit of rations in public storehouses, &c., to be issued thence by the storekeepeers, &c., or by the contractor, at the option of the government. To fulfil the contract of deposit, it was not at all necessary, in any view of it, that the contractors should do more than allow to the government the use of the casks, &c., for such reasonable time as might be required for the consumption of their contents. When the rations were issued, whether by the contractor or by the United States, the casks, &c., were his property, free from any further use or enjoyment by the United States. If issued by himself, and he voluntarily failed or neglected to take the casks, &c., he could have no claim for their value. But if issued by the United States, the case is entirely different. In that event the fact of issuing is not at all brought to his notice. No opportunity is afforded him of reclaiming his property. He is not at liberty to interfere. The time when and the place where are equally reserved for the discretion of the government. The contract contemplates the removal of such supplies from post to post, at the will of the government, by its own agents and at its own expense; and in the nature of things it could never have been intended that under such circumstances the contractor should be obliged to have an agent following the deposits, or constantly remaining with them if retained at the original public place of deposit, so as at his peril to take notice when his property was ready to be surrendered to him. On the contrary, the rule in all analogous transactions would require that the notice should come from the other party. The usage of the government, which the petition avers and offers to prove, is in accordance with this view of the legal obligations of the parties.

6. The last objection is, that, conceding the usage to be as alleged, and to have been established before and at the time of entering into these particular contracts, yet that such usage itself was unlawful, and that under these contracts the contractor can claim nothing for his casks, &c. No reasoning is specially adduced in support of this objection. It implies an assertion, perhaps, that usage cannot be appealed to in cases of government contracts; or possibly it may be

limited to the assertion that these particular contracts cannot be affected by such usage.

It is submitted that neither assertion is well founded. First: It is well settled that the doctrine of usage is applicable to government contracts generally: (U. S. *vs.* MacDaniel, 7 Pet, 1; U. S. *vs.* Fillebrown, ib. lib., 28; U. S. *vs.* Ripler, ib. lib., 18, &c., &c.) And ordinarily all the rules which apply to contracts between individuals, apply equally to contracts between the government and the citizens. Will it be denied that evidence of usage of the trade would be admissible, as between individuals, to show that a contract for the sale of ten thousand gallons of whiskey, at a stated price per gallon, did not embrace the value of the casks in which it should be delivered? or that a building contract did or did not embrace certain particulars? So far is the doctrine carried, that even express and unambiguous words in a contract in writing are controlled and varied by it, (Uhde *vs.* Walters, 3 Camp., 16; Roberts *vs.* Money, R. &. Mood., 75; Roberston *vs.* Clarke, 1 Bing., 445,) even to the extent of converting "*one thousand*" into "*twelve hundred.*" (Smith *vs.* Wilson, 3 B. & Ad., 728.)

Parties are always presumed to contract with reference to the usage which prevails with respect to the matter of the contract. Such usage may add to a contract stipulations not contained in it, on the ground that the parties may be supposed to have had these stipulations in their minds, as part of their agreement, when they put in writing the other part to which the usage annexed such stipulations. (Hutton and Warren, 1 M. &. W., 475; Mills *vs.* Bank U. S., 11 Wheat., 431; Renner *vs.* Bank Columbia, 9 Wheat., 581; Bank Washington *vs.* Triplett, 1 Pet., 25, and numerous other cases.) So in regard to interest. The contract to pay it may be implied for the usage of a place, or of a trade, (Meech. *vs.* Smith, 7 Wend., 315,) or from the course of dealing between the parties, (3 Comst., 502; 1 Barb., 235,) or from the practice of one party, if that be known to the other party. (McAllister *vs.* Reah, 4 Wend., 483; 8 Wend., 109.)

No reason presents itself against the application of these principles to the case at bar, and none has been suggested by the Solicitor. In matters of contract, the United States have been held to all the responsibilities of private parties. In the case of the U. S. *vs.* The Bank of the Metropolis, (15 Pet., 377,) the court say: "When the United States, by their authorized officer, become party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued." And so with regard to all other contracts.

Upon their face these contracts are restricted to the *supplying and issuing of rations*, and to the *depositing of rations*. It is the component parts of the ration, specifically enumerated, which are contracted for, and the price is fixed at so much per ration. The claimant undertakes to show an established usage, with reference to which both parties contracted, whereby, as an incident to this contract, he had reserved to him the property in the casks, &c., containing the rations, to retain them when he issued the rations himself, and to be paid their

reasonable value when they were deposited with the government, under the third article of the contracts, and not returned to him.

Whatever may be the effect of this evidence when produced, it seems, upon the clearest principles, admissable when offered.

No. 1, *c.*

This objection applies to the items for the value of casks, &c., destroyed by the enemy and lost by means of the United States troops respectively. These items are so clearly within the terms of the sixth article of the contract, if the casks, &c., were property of the contractor, that nothing further seems necessary to be added to what has already been said.

No. 2.

Upon the claim for damages on protested bills the Solicitor waives all further question until the proofs are taken.

No. 3.

The claim to be indemnified for the depreciation of treasury notes in which payments were made under the contract at times when such notes were at $8\frac{47}{100}$ per cent. and 11 per cent. below specie.

To this the Solicitor objects that these payments could only have been made to the contractor, he being "willing to accept the same in payment:" and he relies upon the terms of the act of 24th February, 1815, (3 Stat., 215.)

He makes the question turn then upon the true construction of this act; and he interprets it as an attempt on the part of the United States to take advantage of the necessities of their creditors by extorting from them acquittances in full upon receiving the nominal amount of the debts justly due them in depreciated paper. This is a hard thing to say of any person, natural or political. It is a downright imputation of dishonesty. We do not so understand the statute.

At the time of the passage of this law, although the government was not in a condition to discharge its debts promptly in constitutional currency, yet it was not so affected in its credit as to apprehend that its treasury notes would be really worth less than par in the ordinary transactions of life. Doubtless apprehensions were entertained that interested attempts would be made to depreciate their value, and hence the direction that they should be issued and paid out at par. And inasmuch as no act of Congress could make anything but gold or silver a legal tender, it was a very proper provision of the law that no payment in treasury notes should be made, except with the consent of the creditor. This is the only fair and legitimate scope of the 8th section of the act of 1815. By these intents the court will construe its terms. To go further and to say that, besides these legitimate intents, the legislature had in view an infamous speculation, the elements of which were to be, on the one hand, the depreciation of the public credit, and, on the other, the ruinous straits to which that depreciation should reduce the citizen to whom his government was indebted for the daily bread of its army and navy—to go this far, would be to adopt a rule of construction as novel as it would be injuri

ous alike to the character of the legislature and the rights of the citizen.

The truth is, that the provisions of the 8th section of the act of 1815 were not novel at the time, nor were they peculiar to that and the preceding period in our history. They will be found in the act of 1812, ch. 111, sec. 4, (2 stat., 767 ;) in the act of 1813, ch. 27, sec. 5, (2 stat. 802 ;) in the act of 1814, ch. 18, sec. 5, (3 stat., 101 ;) in the act of 1815, (*u i supra ;*) in the act of 1837, ch. 2, sec. 4, the next issue, (5 stat., 202 ;) and in all the subsequent acts authorizing the issuing of treasury notes, the provisions of the act of 1837 are declared to be in force, down to the act of 1847, ch. 5, (9 stat., 119,) in which (sec 4) these provisions are expressly repeated at length.

So that if it could be imagined that Congress was actuated by any motive of base speculation upon an embarrassed state of the public treasury, existing or apprehended, in 1815, what is to be said in view of this legislation, extending over our whole history from 1812 to 1847—the latest issue of treasury notes—and a period of great national wealth and prosperity?

It must be evident that the true, as they are the only legitimate, intents of the law were those above suggested, viz: to require the notes to be issued at par, to prevent speculation upon the government, and to declare that payment in notes, instead of gold and silver, should not, as it could not, constitutionally be made against the will of the creditor. This leaves the question of legal and moral responsibility open in the present case The petitioner offers to show that there was, in fact, no option given to the contractor ; that the supposed election was merely illusory ; that he was compelled to take the treasury notes, or to take nothing—in other words, to submit to absolute ruin, bankruptcy, and disgrace He offers to show the real *bona fide* value of the notes, at the time they were paid to him, was such only as is stated in the petition ; that, in fact, he was not paid the debt due to him by the amount of the sum claimed in this behalf; and that, although the government agreed that he should be fully paid, and in issuing to him these treasury notes intended and believed that they were equivalent to gold and silver, they were not so, and did not, in fact, in law, or in conscience, discharge the debt.

No. 4, *a* and *b*.

These items are founded upon an interference by the United States (one of the parties to the contract) with the subject-matter of the contract, whereby, indirectly, a portion of the contract price was reserved to the United States and withheld from the contractor. No such intention is imputed to the government; but this is the precise effect of the legislation in question.

The substance of the case is, that on the 25th February, 1813, the contractor agreed with the United States, amongst other things, to furnish rations of whiskey at certain stipulated prices, founded upon existing market rates, but, it may be presumed, embracing a reasonable calculation of the fluctuations of the market, and other ordinary risks in such cases. At all events, these risks are, in the nature of things, involved in every such contract. But in five months after the

date of the contract, and within a few weeks after it went into operation, the United States passed an act of Congress levying a tax upon whiskey, whereby the price of that article was directly enhanced to such a degree as more than to absorb all the profits of the contract in that particular. To the extent to which the contractor was obliged to purchase that article to supply the United States, he was, in substance, forced by the United States to abate, in their favor, so much of the contract price as the tax amounted to. Now, in considering the effect of this legislation upon the contract, it is to be borne in mind that it is the voluntary act of one of the parties to the contract, directly adding to the burdens assumed by the other party in the very matter of the contract, and indirectly, to a considerable extent, discharging the obligations of the party so interfering. Even in the case of contracts between private parties, entered into on both sides in good faith, and without any knowledge or suspicion of impending increase of duties upon the commodities so contracted for, so great have the injustice and hardships of the case appeared to the British Parliament, that the acts of 17 and 18 Vic., chap. 28, sec. 4 and 17 and 18 Vic., chap. 27, sec. 7, expressly provide that, in all such cases, the increased duty shall be added to the price of such commodities, and may be recovered accordingly. These statutory provisions were doubtless necessary for the relief of contractors in contracts to which the government was no party. They are founded in natural justice and right. But no such provision of law can be necessary where the government itself is the party to be supplied with the commodities upon which, pending the contract, it chooses voluntarily to levy the additional duty. It is impossible not to see that the right to insist upon the contract price, under such circumstances, involves the right to absorb the whole contract price under the name of duties, and thus to have the goods without any price whatever. As between individuals, in such a case, there can be no doubt that equity would relieve; and it is easy to imagine cases in which, upon facts no stronger, (but without the public duty and motive of government,) a contract might be vacated for fraud.

Neither of the cases upon the Solicitor's brief announces any such principle as that which is necessary to reject these items of claim. The case in 4 Peters only recognizes the power to tax a trading franchise, whose charter contained no exemption, and implied none; and the case in the 11th is the celebrated case of the Boston bridges, in which the monopoly claimed by the Charles River Bridge Company was denied upon principles not at all affecting the present question, as will plainly appear upon an analysis of the case.

As to the various suggestions upon the brief, touching the measure of damages, the extent of compensation, and the difficulties in the way of arriving at satisfactory conclusions as to some of the items of claim, they will be considered at a subsequent stage of the cause.

It is believed that all the objections in law have been now briefly adverted to; at least sufficiently to indicate the line of oral argument.

BADGER & CARLISLE,
Of Counsel for Claimant.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased.

JUDGE BLACKFORD delivered the opinion of the court.

On the 7th of November, 1811, W. Eustis, Secretary of War, and Elbert Anderson, the intestate, entered into an agreement under seal. The following is the substance of so much of that agreement as concerns this suit:

The intestate agreed to supply and issue all the rations that should be required of him for the United States at the places where the troops were or might be stationed, marched, or recruited within the State of New York, (Niagara and its dependencies excepted,) and the State of New Jersey, from the 1st of June, 1812, to the 31st of May, 1813; which rations were to consist of certain specified articles, and to be paid for at certain specified prices.

It was agreed also, in the third article of said agreement, that supplies should be furnished by the intestate at the fortified places and military posts that were or might be established in the States of New York and New Jersey, upon the requisition of the commandant of the army or a post, in such quantities as should not exceed what should be sufficient for the troops to be there stationed, for the space of three months in advance; that if the intestate should he required to deposit provisions at one place or post, and should afterwards be required to move them, to be delivered at another place or post, the expense of transportation should be borne by the United States; and that all supplies should be originally delivered at the posts where they might be required, without expense to the United States.

It was further agreed, in the sixth article, that all losses sustained by the depredations of an enemy or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, should be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more credible characters, and the certificate of a commissioned officer when the same could be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation was claimed.

It was further agreed, in the 10th article, that advances of money to the intestate on account of supplies to be furnished, and of money paid for supplies on his failure to furnish them, should be accounted for by him, and the balance against him, if any, should be paid to the United States immediately after the expiration of the term of the contract, with interest from the time of such expiration; that if, on settlement, a balance should be found due the intestate for rations supplied pursuant to the agreement, the same should be immediately paid; and that no unreasonable or unnecessary delay, on the part of

the officers of the United States, should be given to the settlement of his accounts.

There is a supplement to the above agreement which states that when issues should be required from the public deposits General Dearborn might call on the intestate for that purpose; that an inventory should be taken of such supplies; that the intestate should receipt therefor, and account to the United States for all the supplies receipted for, deducting twelve and a half per cent. for wastage, leakage, &c., and receive one cent for each ration which he should issue.

There is a subsequent agreement under seal, dated the 25th of February, 1813, between John Armstrong, Secretary of War, and the intestate. This second agreement is similar to the first, except that the rations were to be supplied and issued for the year commencing on the 1st of June, 1813, and ending on the 31st of May, 1814, and that their price, and the limits within which they were to be furnished, differed from those mentioned in the first agreement.

The first breach alleged in the petition is a breach of the contract of the 7th of November, 1811. That breach is as follows:

That the contractor, in addition to said provisions, furnished to the United States a large number of casks and packages, boxes and barrels, wherein the provisions were contained, which were retained and used by the United States, and were never returned, and were worth $13,972 30.

This breach applies only to the third article aforesaid of the agreement, which article provides for the deposit of supplies at fortified places and military posts. These supplies were to consist of certain proportions of flour, beef, pork, &c., as the component parts of the rations, and were to be paid for at a fixed price per ration. But the agreement is silent in regard to the casks, barrels, &c., in which the component parts of the rations were necessarily to be contained, in order that they might be transported to the places of deposit, and deposited and preserved in the storehouses which the government was to provide for the deposits. There is no doubt but that very large supplies were deposited and paid for under the contract; but the evidence is not definite as to the number of the casks, boxes, &c., which contained the supplies. The present claim for the value of those casks, boxes, &c., was rejected in 1814 by the Accountant of the War Department on the settlement of the contractor's accounts as not coming within the terms of the contract. Its allowance was also refused by the Secretary of War. The same claim was presented in 1823 to the Third Auditor and was rejected by him.

The second breach assigned by the petition is a breach of the contract of the 25th of February, 1813. This breach is very similar to the one just noticed relative to the previous contract. It raises the same question that the other does, namely, whether, under such an article as the third one before referred to, the government is liable, in addition to the price of the rations deposited, to pay the contractor for the casks, boxes, &c., containing the component parts of such rations. The claim under the last mentioned breach, amounting to $10,921 90, was presented to the Third Auditor on the 16th of June,

1824, in a supplementary account, and was rejected by him on the 24th of the same month.

The aforesaid claims for the value of casks, boxes, &c., arising under both of said contracts of 1811 and 1813, were afterwards presented to Mr. Calhoun, Secretary of War; and on the 12th of August, 1824, he gave a written opinion against them. These claims were afterwards presented to Congress, and on the 10th of March, 1826, the Committee of Claims of the House made an elaborate report against their validity. The same claims are now brought before this court, and our opinion is that they cannot be sustained.

It appears to us that there is nothing in the agreements to show that said casks, boxes, &c., were to be a separate charge. The component parts of the rations were to be furnished at designated posts, on the requisition of the commander, in sufficient quantities for the troops there, for not exceeding three months in advance, and to be delivered there without expense to the United States at a fixed price per ration, the government furnishing the necessary storehouses. The fair inference is, the agreements being silent on the subject, that the casks, boxes, &c., which were indispensable to the making of the deposits, were included in the prices of the rations. This view is strengthened by the fact that there is no evidence tending to show that the prices paid were not a full compensation for all that was received. In a case where the plaintiffs contracted to sell to the defendant ten tons of oil at 31*s.* and 6*d.* per cwt., to be free delivered by the plaintiffs to the defendant within a certain time, one of the judges, in his opinion, said: "If the tender were made at an unreasonable place, could not the purchaser refuse to receive the goods there? The sale note does not express that the oil is to be delivered *in casks;* but would the purchaser be bound to receive it if offered to be delivered *in bulk?* (Startup *vs.* McDonald, 2 Manning and Granger, 395, per Maule, J.)

We think that, from the evidence in the case before us, and for the above reasons, the United states are not bound to pay the charge now made for the casks, boxes, &c., in which the component parts of the rations were contained.

The Third Auditor, in his opinion of the 24th of June, 1824, says: "The question whether a contractor is entitled to charge to the United States the value of the casks and boxes in which his provisions are contained when he makes a deposit under his contract, has been repeatedly decided in the negative. In Mr. Anderson's own case, such was the decision when his accounts were settled in the year 1815. (See the accountant's letter to the Secretary of War, dated the 8th of July, 1815.) The form in which the present charge is made being so far different from the former as that its amount is lessened by a deduction of the amount of casks and boxes received back by Mr. Anderson, does not affect the principle on which the opinion is founded. Contractors are not entitled to such allowance. This claim is, in my opinion, inadmissible."

The Secretary of War, Mr. Calhoun, in his opinion, says: "The order to deliver provisions in depot seems necessarily to comprehend the barrels and casks, &c., in which they are contained; and such, I understand, has been the construction under the contract system from

its commencement to its termination in 1819, and which at this late period ought not to be changed, even if there were reasonable doubts, as there are not, as to its correctness. It is to be presumed that the invariable construction of contracts, under a system so long in operation, would be known to the contractors as well as the government, and the acquiescing in it of both may be fairly presumed."

The third breach which the petition assigns is a breach of the second contract aforesaid. This breach states that during the execution of said contract casks and packages containing the rations to be issued to the troops were lost or destroyed to the value of $4,805 86; that $1,901 12 of the said casks and packages were captured and destroyed by the enemy, and $2,904 75 of the said casks and packages were lost and destroyed by the troops of the United States in descending the St. Lawrence.

This claim was not made by the contractor until the lapse of between eight and nine years after it is alleged to have accrued—that is, not until the 12th of August, 1823. The facts, according to the report of the Third Auditor, are as follows: "The barrels and boxes here charged contained the whole quantity of provisions received by Robert Swartwout, quartermaster general, on the 22d of October, 1813, and were placed in different boats descending the St. Lawrence. The greater part of these provisions were returned to Mr. Anderson for issue to the troops; the remainder were captured and destroyed by means of boats being stove, and by the troops of the United States. The contractor was paid the gross amount of said losses at the same rate as if the provisions had been actually issued."

This claim for the barrels and boxes containing said provisions is founded on the sixth article of said second agreement, which is the same with the sixth article of the first agreement before stated. This article provides for the payment by the United States of rations belonging to the contractor, and other property necessarily used in their transportation, when captured or destroyed as aforesaid. The claimant contends that said barrels and boxes must be considered as having been used in transporting the rations, and are therefore within said sixth article; but that is not so. We understand this article to mean the wagons and horses and other means employed to convey the provisions, with the barrels and boxes containing them. It was not intended that such barrels and boxes should be, under any circumstances, a separate charge. The Third Auditor rejected this claim; and it was rejected also by Mr. Calhoun, the Secretary of War. The contractor was paid by the government for the provisions lost or destroyed at the same rate as if he had issued them, which, at most, was all he was entitled to.

The fourth breach assigned in the petition relates to the tenth article of both said agreements. This breach states that during July and August, 1814, the contractor transmitted his accounts to Washington, by which accounts he was in advance a sum exceeding $200,000; that on the 15th of October, 1814, he transmitted a further account, showing a balance due him of $263,004 55½; that during July, August, September, and October, the United States refused or neglected to settle said accounts, the delay being unnecessary and

unreasonable; that when the accounts were finally settled, the said balances were found to be correct, and were paid to an amount exceeding $200,000; that on the 27th of October, 1814, the contractor drew two drafts on the Secretary of War, one for $150,000, payable at sight, and the other for $50,000 at fifteen days' date, which were returned protested for non-payment. The claimant, therefore, demands ten per cent damages, that is, $20,000 on the protested drafts, together with interest from the date the claim accrued.

The substance of this claim is, that the contractor's accounts sent to the War Department, though unsettled, showed that the indebtedness of the government exceeded the amount of the drafts when they were drawn, and that the government wrongfully suffered the drafts to be protested, and thus became liable to the contractor for ten per cent. damages on their amount, with interest on the same.

That doctrine is not sustainable. The case of Rollin *vs.* Stewart, 25 Eng. C. L. and Eq. Rep., 341, relied on by the claimant, merely decides that if a banker, having sufficient money of a trader on deposit, refuse to pay the latter's check, the refusal is a ground of action for damages. But that grows out of the peculiar relation in which such parties stand to each other as banker and customer. The rule does not apply to other cases of debtor and creditor, and especially where (as when the drafts in question were drawn) the amounts between the parties are unsettled. There is no evidence in this case of any special authority to draw the drafts; but, on the contrary, the following letter to the contractor shows there was none:

"WAR DEPARTMENT, *October* 31, 1814.

"SIR: Your letters of the 26th and 27th instant have been received. As soon as your accounts are acted upon and settled by the Accountant of this department, in the accomplishment of which no time will be lost, any balance which may be due you shall be promptly paid. It is impossible to accept or pay your drafts until a settlement of your accounts is made.

"I have the honor, &c.,

"JAMES MONROE."

But the claimant contends that there was unnecessary and unreasonable delay in settling the accounts; for which delay damages are recoverable.

It is impossible, at this distant day, to ascertain distinctly whether there was such objectionable delay or not. The situation of the business, during the time, in the accountant's office cannot now be known. There is on the subject the following letter, dated October 20, 1814, from the accountant to the contractor:

"SIR: I have received your letter of the 17th, with its enclosure. The adjustment of your accounts as late contractor cannot, from the great pressure of business, be taken up at this time. When it shall be practicable to enter upon the subject you will be informed."

That the contractor's accounts, as transmitted for settlement, were very incorrect appears from the following letter:

"DEPARTMENT OF WAR,
"*Accountant's Office, March* 10, 1815.

"SIR: Your account for supplies furnished under contract dated November 7, 1811, has this day been adjusted, and a balance found due thereon to the United States of one thousand eight hundred and thirteen dollars and thirty-one cents, which sum will be carried to your debit in account under contract of February 25, 1813. The aforementioned balance differs from your statement in a sum of $27,940 63, which you will find fully explained in a statement of differences here enclosed for your government.

"I am, &c.,

"TOBIAS LEAR.

"ELBERT ANDERSON, Esq."

"DEPARTMENT OF WAR,
"*Accountant's Office, March* 14, 1815.

"SIR: Your account for supplies furnished under contract dated February 25, 1813, has this day been adjusted, and a balance found due you thereon of one hundred and eighty-one thousand two hundred and forty-three dollars and fifty-seven cents, which sum has accordingly been reported to the Secretary of War for payment. The aforesaid balance differs from your statement in a sum of $84,865 45, which is fully explained in a statement of differences here enclosed for your government.

"I am, &c.,

"TOBIAS LEAR.

"ELBERT ANDERSON, Esq."

There is also, as regards the delay complained of, the following official statement of the Third Auditor in his aforesaid report in 1824: "The contract states that no unreasonable or unnecessary delay shall arise on the part of the public in making the settlement after the accounts shall have been rendered. It is believed that no unreasonable or unnecessary delay did arise on the part of the accountant. In the correspondence between the officer and Mr. Anderson it appears that the vouchers for Mr. Anderson were generally rendered in due season, but instances did occur when it became necessary to return vouchers for correction, and to suspend others for explanation. His accounts, settled in March, 1815, were not finally rendered until October 19, 1814; and, considering the immense extent of his transactions, it is believed that the account could not have been more speedily disposed of."

We think that the claim on account of delay relative to said settlements is not sustained by the evidence.

The fifth breach applies to both contracts, and is substantially as follows: That by the terms of said contracts the United States agreed to pay for said rations a certain price in money; that the contractor was compelled to wait ten months from the period at which his accounts were tendered for settlement before payment of the balances due by said accounts was tendered to him; and that he was then com-

pelled to receive said payment in treasury notes, which were from eight to eleven per cent. below par; and that he thereby suffered a great loss, to wit, the sum of $22,214 20. In the claimant's brief this claim is described as follows: "The claim to be indemnified for the depreciation of treasury notes, in which payments were made under the contract at times when such notes were at $8\frac{47}{100}$ per cent. and 11 per cent. below specie." (See brief, p. 7.)

This claim was not made until June, 1824, when it was presented to the Third Auditor, and was rejected. One of said balances, which was $56,756 42, was paid, on the 1st of September, 1815, and the other, which was $188,632 91, was paid on the 11th January, 1816, both payments being made in treasury notes bearing interest. When the first balance was paid, treasury notes were, at New York, about one and a half per cent. better than New York bank notes, and were from nine to ten per cent. discount as to specie; and when the second balance was paid treasury notes were at a discount of about one per cent. for New York bank notes, and at a discount of from nine to ten per cent. for specie. The act of Congress of the 24th February, 1815, under which said treasury notes were issued, contains the following section:

SEC. 8. "That the Secretary of the Treasury be, and is hereby, authorized, with the approbation of the President of the United States, to cause the said treasury notes to be issued at the par value thereof in payment of services, of supplies or of debts, for which the United States are or may be answerable by law, to such person and persons as shall be willing to accept the same in payment; and to deposit portions of the said notes in the loan offices, or in State banks, for the purpose of paying the same to the public creditors as aforesaid; and to borrow money on the credit of the said notes, or to sell the same at a rate not under par; and it shall be a good execution of this provision to pay such notes to such bank or banks as will receive the same at par, and give credit to the Treasurer of the United States for the amount thereof on the day on which the said notes shall thus be issued and paid to such bank or banks respectively." (3 Statutes at Large, 215.)

Treasury notes issued under that act were accordingly paid by the government to those of its creditors who chose to receive them at par in discharge of their demands, and among the creditors to whom such notes were so paid was the said contractor, Mr. Anderson. After the passage of the said act of Congress, viz: on the 15th of May, 1815, Mr. Anderson wrote to the Secretary of War as follows: "Sir: I have a well-grounded hope that you will now fulfil the pledge made by the Hon. James Monroe in his letter of 31st October, 1814, and extinguish this claim by giving six per cent. stock at your offer of ninety-five of debt for one hundred of stock, or give me the amount in treasury notes authorized to be issued by the law of February 24, to all such creditors who have given the United States supplies, and are willing to receive treasury notes at their par value."

And in a letter of August 22, 1815, to the Secretary of the Treasury, Mr. Anderson says: "I therefore again have the honor to solicit from you an early reply, whether or not I can be paid in the current

money of New York or in treasury notes at par any proportion of the great balance now due as may be within your power as Secretary of the Treasury to grant." The balances were afterwards paid to Mr. Anderson in treasury notes as aforesaid. We think there can be no doubt but that his receipt of the treasury notes at par in payment of the sums due put an end to the demand. There is no more right now, on the part of the contractor, to claim a discount on the treasury notes he received, than there was for the contractor himself to claim it at the time he received the notes.

The sixth breach which refers to the second contract, states that on the 24th July, 1813, Congress passed an act laying a duty on stills and boilers employed in distilling spirits from domestic materials, to take effect on the 1st of January, 1814; that in consequence of that act the price of whiskey was greatly increased throughout the whole term of said contract, and that the contractor therefore was compelled to pay, as an increase of the cost of the whiskey furnished, the sum of $45,709 51. This act of Congress, the petitioner alleges, violated that part of the contract which fixed a certain price for the whiskey part of the ration.

Whiskey being one of the component parts of the rations required to be furnished, a very large quantity was, no doubt, furnished by the contractor to the United States and paid for by them under the contract. There is not, however, any certain testimony as to the number of gallons furnished; and though said act of Congress may, and no doubt did, cause a rise in the price of whiskey, there is no definite testimony as to what that rise was. But we do not think the act was a breach of contract as alleged. The contract was merely to pay certain prices for the rations to be furnished, specifying the prices of the component parts of the rations; and it must be considered, in the absence of anything in it to the contrary, as having been intended to be subject to the taxing power of Congress. And, indeed, if there had been a provision in the contract exempting the stills and boilers aforesaid from taxation, it would have been void for the want of authority in the Secretary of War to agree to such a provision. The Solicitor refers to a decision of the Supreme Court of the United States. The case is this: The legislature of Rhode Island, in 1791, chartered the "Providence Bank," the charter containing no stipulation exempting the stock from taxation. There were other banks afterwards chartered. In 1822 the legislature imposed a tax on the stock of the banks of the State. The Court held that though the charter of the Providence Bank was a contract, the act of 1822 did not impair its obligation. The principle recognized in that case is, that the taxing power of a State is not affected by any contract made by the State, in which the deliberate purpose to abandon the power does not appear. (Providence Bank *vs.* Billings, 4 Peters, 514.) That case, so far as it applies, is against the present claim. The Solicitor refers, also to the case in the same Court, of The Charles River Bridge *vs.* The Warren Bridge, 11 Peters, 420. That case, too, so far as it applies, is against the claim. In 1823, and again in 1824, this claim was presented to the Third Auditor, and was rejected.

The seventh breach is in regard to the second clause of the third

article in the second contract. That breach states that whilst certain provisions were being transported to the mouth of Genesee river as required, General Hull required them to be transported to Williamsville, and they were accordingly so transported by the contractor; that the expense of such transportation to Williamsville was $12,303 37, which the United States have refused to pay.

This claim was presented to the Third Auditor on the 12th of August, 1823, and was rejected by him. The following are the remarks of the Third Auditor: "On the settlement of Mr. Anderson's account, made the 27th June, 1815, he received a credit for $5,259 52, being the amount then charged by him for transporting provisions from Genesee river to Williamsville, Batavia, and Cambria, on the order of General Hull of the 9th January, 1814. The provisions for which the transportation is now claimed, Mr. Anderson states, were intended to be deposited at Genesee river, agreeably to the order of the Secretary of War; but before they were delivered at that place, the provisions were ordered to be removed, in consequence of the invasion by the enemy, and is in addition to the transportation already admitted to his credit in the settlement before mentioned. (See his remarks accompanying the abstract and vouchers for the transportation now claimed.)

"In the settlement made and referred to in the above remarks, I am of opinion that Mr. Anderson has received all the credit on this account that he was entitled to. The order of General Hull of the 9th January, referred to as authority for making the charge, it will be found, is limited to the provisions then autually in store; and the amount already allowed, corroborated by the storekeeper's certificate and by the statement made by Mr. Anderson, above referred to, covers all the provisions then deposited. The charge is, therefore, inadmissible."

There being no evidence relative to this claim, except what is contained in the above report of the Third Auditor, the claim must, of course, be rejected.

The eighth breach states that, in excution of the second contract, one of Mr. Anderson's agents was compelled, on the requisition of General Dearborn, and without Anderson's knowledge, to receive a large amount of provisions, not of proper proportions, which had been left in deposit by Mr. Porter, a previous contractor, and also a large amount of damaged provisions captured from the ememy; that said provisions contained, among other things, 306,338 flour rations, which flour was credited to Porter at five cents a ration, and charged to Anderson at seven and a half cents a ration; and that for the loss so sustained the sum of $9,190 14 is claimed.

A claim for the above amount was presented by Anderson to the Third Auditor in August, 1823. The claim then was for damages sustained in receiving an excess of flour from the deposits made by Augustus Porter, and from provisions captured, &c., and which he was compelled to receive by order of the commanding general. The Auditor rejected the claim. It was afterwards submitted to the Secretary of War, Mr. Calhoun, who also decided against it. The following, in a letter of August 12, 1824, to Mr. Anderson, is Mr. Cal-

houn's decission: "No. 7 is a claim for damages sustained in receiving an excess of the flour part of the ration from a deposit made by Augustus Porter, the previous contractor, and provisions captured from the enemy, which were damaged, and which you state you were compelled to receive by the order of the commanding general. Against this claim it is objected by the Third Auditor that your agent acknowledged the receipt of the provisions without mentioning anything of their being damaged, or making objections as to the inequality complained of as to the flour part of the ration, and that they were passed on his receipt to the credit of the former contractor and to your debit, after deducting 12½ per cent. for wastage and one cent a ration for issue; against which you object that the order of General Dearborn was peremptory and left your agent no discretion in receiving them, and that you protested against the order as soon as you were apprised of it, and claimed suitable and equivalent arragements for those sacrifices which you had to make in supplying the deficiency in parts of rations I have turned to the only order of General Dearborn that I can find, which does not appear to me to be any more than a request that Mr. Thorn, your agent, should receive the provisions, and it appears to me that his receiving them under the letter of General Dearborn, without making any objection, fairly authorizes the contractor to be charged with the same. Besides, it does not appear that you had sustained any damage by the flour not being in a good condition. There is no evidence to show that the whole of it was *not issued*. In addition to these remarks, I understand, by your letter of the 15th of July, 1815, to General Dearborn, that your objection was to being called on to fill the deficiency of parts of rations left in deposit by Judge Porter, and that your claim for damages was confined to that particular. Even were the claim in that view to be well founded, it would still be necessary to prove, before it could be allowed, that you sustained damage by *supplying the deficiency of the parts of the rations*, and the amount of such damages."

The claim for said sum of $9,190 14 is not sustained by the evidence before us.

The ninth breach which relates to the second contract, states that in September, 1813, the contractor, Anderson, repaired to the northern frontier to issue from deposits there according to his contract, but that he was deprived of the benefit of doing so by General Hampton, who stated his intention to supply the troops without resort to the contractor; that the department afterwards admitted this wrong, and agreed to allow the contractor therefor, as damages, 12½ per cent. on the deposits, the per centage allowed as aforesaid for wastage and leakage, and the one cent per ration for issue; that the per centage, amounting to $9,843 75, was paid, but payment of the one cent per ration, amounting to $4,500, was refused.

There is not the slightest evidence that the department, as this breach alleges, ever made an agreement to pay said per centage and one cent per ration in consequence of said interference of General Hampton. The Third Auditor's report on this claim, made in 1824, is as follows: "Mr. Anderson originally charged the United States, in his accounts rendered in 1814, $14,343 75 for damages sustained by

breach of contract on the part of General Hampton, by his appointing an issuing commissary from September 15 to December 15, 1813, a period of ninety days, calculating for 5,000 men, and charging 12½ per cent. and one cent per ration, the advantage he would have derived had he been permitted to make the issues. Of this sum $9,843 75 was allowed him on the settlement of his account as a full compensation for the breach of contract aforesaid. The principle upon which this sum was allowed appears to be that of 12½ per cent. on the estimated amount of provisions issued, as charged by Mr. Anderson. The one cent per ration also charged, and forming the difference between his charges and that allowed, was not considered admissible, it is presumed, on the ground that he had not incurred the expense of issuing, and therefore was not entitled to the allowance. I do not consider myself authorized to make any further allowance." The claim was also rejected by the Secretary of War.

It is contended that Anderson was entitled to the whole sum he would have received had the rations been actually issued by him; but that is not so. He was only entitled to the difference between that sum and the cost of issuing the rations—that is, to the net profits of issuing them; and there is nothing in the case to show that those profits would have exceeded the $9,843 75 which have been paid to him. The claim, therefore, is not sustained.

The tenth and last breach assigned in the petition relates to the second contract. It states that the contractor received a large quantity of provisions from the stores that had accumulated in the neighborhood of Sackett's Harbor for the purpose of providing the troops with provisions during their descent down the St. Lawrence; that the contractor was entitled, by the contract, to 12½ per cent. leakage and wastage on the gross amount of deposits thus received, and one cent per ration for the expense and trouble of issuing the same; that a large amount of said provisions, during said descent, were lost or destroyed, for which the contractor received compensation; that after deducting the amount of perquisites on the provisions destroyed, there remained due the contractor the sum of $5,749 69 as perquisites on provisions actually received by the contractor, and by his agent issued to the troops, with which sum the United States refused to pay.

The perquisites above spoken of are the 12½ per cent. on the amount of the provisions received from the government deposits to be issued, and the one cent per ration for issuing them, provided for by the contract. Now, if the provisions in question were received by the contractor from the government deposits, as the petition seems to say, we must presume (the contrary not appearing) that, according to the settled practice, said perquisites were deducted from the amount received from the deposits at the time of the receipt, the contractor thus receiving the perquisites in advance. In that case, there would be, of course, no ground for this claim. But if, on the other hand, the provisions were not received from the government deposits, but belonged to the contractor, and were issued from his own stores, then there is no gound for his claim, because the contract in such case makes no extra allowance for wastage and leakage or for

issuing the rations, the contractor receiving the contract price for supplying and issuing the rations, and nothing more. So that, in either point of view, the claim is without foundation. This claim was rejected, in 1824, by Mr. Hagner; and Mr. Secretary Calhoun, soon afterwards, also rejected it. The following is Mr. Calhoun's opinion; "Number 9, supplementary claim for the allowance of 12½ per cent. for leakage and wastage. and one cent for issue, for provisions issued to troops descending the St. Lawrence. In no view which I can take of this claim does it appear to me to be well founded. If the provisions were drawn from depot, placed on board the public boats, it is manifest that the contractor has already been allowed the amount claimed; but if they were provisions from the contractor's own stores, it is equally clear that he was entitled to a credit only on the ussue of the provisions, without any allowance for wastage or leakage, or one cent per ration for issuing."

We have now noticed all the claims set out in the petition, and consider, for the reasons given, that none of them are well founded. Our opinion, therefore, is, that the claimant is not entitled to recover.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 204.

MARIANO G. VALLEJO.

[To accompany Bill H. R. C. C. 92.]

FEBRUARY 11, 1860.—The Court of Claims submitted the following report; which was referred, together with the accompanying bill, to the to Committee of Claims.

MARCH 1, 1860.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

MARIANO G. VALLEJO *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Memorial to Congress with accompanying papers referred by the Senate to the Court of Claims, and other documentary evidence, filed by claimant, transmitted to the Senate.
3. Documentary evidence filed in behalf of the government, transmitted to the Senate.
4. Additional evidence filed in open court by claimant, transmitted to the Senate.
5. Claimant's brief.
6. United States Solicitor's brief.
7. Opinion of the court.
8. Bill allowing claimant twelve thousand and six hundred dollars.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the Judges of the Court of Claims of the United States of America, established by act of Congress, approved 24th of Febuary, in the year 1855.

Your petitioner, Mariano G Vallego, a resident of California, and a citizen of the United States, respectfully represents: That, in July,

1846, his private property, situated in the Plaza of Sonoma, California, was taken possession of and occupied by the United States troops, under different commanding officers, during the late war with Mexico, and was continued to be so occupied from the above period until August, 1853. That the said property was occupied as officers' quarters, soldiers' barracks, ordnance, quartermaster's and companies store-houses, and also a bake-house for the command; and that the grounds were enclosed by a wall, and contained stable, yard room for horses, wagons, and other articles necessary for a military post.

Your petitioner has the evidence of the various officers of the United States, who occupied the quarters during the period claimed for, copies of which are hereunto annexed, proving that the said private property was taken possession of, and used by the United States, and that the amount charged for rent is not only just, but reasonable.

Your petitioner also refers to the letter of the quartermaster general, submitting the claim of your petitioner to the second comptroller of the treasury, and the report of that officer thereon, copies of which are annexed, by which it will be found that the correctness and justness of the claim is not disputed, payment only being withheld on the ground that the claim was not embraced in the estimates for the Quarmaster's department, and that Congress alone could afford relief by directing payment to be made to your petitioner. The amount claimed by your petitioner is $20,600.

Your petitioner would ask attention to the fact that his claim for rent is duly certified by all the proper officers of the forces, from the commencement to the close of their occupation of said quarters, and is deemed by them just and equitable, and which certificates petitioner is ready to produce. Your petitioner would further state, that the rent, as it became due, would undoubtedly have been paid by the quartermasters, stationed in California—the only objection for withholding payment at the time, being the belief on the part of some of them that the premises were the property of the Mexican government. The decision of the board of commissioners on private land claims, under date of January 17, 1854, confirmed your petitioner's title to said property, and a decree of the United States circuit court for California has since been made re-confirming the same, thus, as your petitioner believes, removing the only valid objection that ever existed in the minds of any of the quartermasters, as to the justness of his claim, it being precisely of a similar character to others which have been paid by them.

Your petitioner further states, that he submitted his claim to Congress at its last session, and that the evidence in support thereof is now on the files of the Secretary of the Senate, and the said claim has been referred by the Senate to this court, and which your petitioner will be able to produce to your honorable court.

Your petitioner further states that he is the sole owner of said claim.

Your petitioner therefore prays, that the Solicitor of the United States, appointed to represent the government before this honorable court, may be required to answer to this petition, and that such proceedings may be had thereon as justice and equity require, and that

on the final hearing that this court will grant to your petition such relief as his case merits.

M. G. VALLEJO.

J. D. STEVENSON,
Attorney for Claimant.

STATE of CALIFORNIA, *city and county of San Francisco, ss:*

This day, before me, the undersigned, a notary public in and for the city and county aforesaid, duly authorized to administer oaths, personally appeared M. G. Vallejo, who, being duly sworn, deposes and says, that the foregoing petition is true; that he was residing in California at the time mentioned therein, and that the facts therein stated are all within his knowledge.

M. G. VALLEJO,

Subscribed and sworn to this 29th day of March, 1856, before me.
W. HART.
Notary Public, San Francisco.

EXHIBIT No 1.

QUARTER MASTER GENERAL'S OFFICE,
Washington City, January 30, 1855.

SIR: I herewith enclose a claim of Mariano G. Vallejo for rent of an adobe building at Sonoma, California, which, it would appear, was occupied by troops in the service of the United States, under different commanding officers, from July, 1846, to August, 1853, amounting to $20,600.

It will be seen by the certificate annexed to the account, that the building was taken possession of as public property, and used as such during the period charged for, and that no rent has been paid for the buildings. And it appears by the decree of confirmation of private land claims, dated January 17th, 1854, that said M. G. Vallejo has been adjudged to be the owner of the property. The question submitted is, whether this department or the public is liable for rents while it was occupied as public property prior to the decree of confirmation, and, should the claim be just and correct, whether it can be paid from any existing appropriation for the service of the Quartermaster's department?

The Quartermaster General has never made any estimate, nor has any appropriation been made to cover the expenditure, and he is of opinion that it is a claim for the special action of Congress.

Very respectfully, &c.,

CHAS. THOMAS,
Deputy Quartermaster General, in charge.

EXHIBIT No 2.

TREASURY DEPARTMENT,
Second Comptroller's Office, January 30, 1855.

SIR: I return herewith all the papers connected with the claim of M. G. Vallejo for the occupation and use of his property by the troops of the United States from July, 1846, to August, 1853, amounting to $20,600.

It appears from the evidence, that this property was taken without the consent of the owner, and used for government purposes under the idea that it belonged to the public; but I agree with you in opinion that the claim cannot be considered and paid as rent of quarters. Forcible entry and possession is alleged, and no executive officer is authorized to make compensation for the tresspas and conversion. Such claims are not estimated for, and are not within the scope of any appropriation acts. So far as the government is concerned, Congress alone can afford relief for the injury the claimant is said to have sustained.

I am, very respectfully, yours,

J. M. BROADHEAD,
Comptroller.

Major General T. S. JESSUP,
Quarter-Master General.

IN THE COURT OF CLAIMS.

MARIANO G. VALLEJO *vs.* THE UNITED STATES.

Claimant's Brief.

The premises in question are claimed by virtue of a Mexican grant, dated 5th July, 1835. (Page 53, 54.)

The rights of property of Mexicans were secured by the 8th and 9th articles of the treaty of Guadalupe Hidalgo of February 2, 1848.

To carry into effect the provisions of this treaty, Congress passed the act 3d March, 1851, (9 vol. Stats , 631,) by which a board of commissioners was organized to "ascertain and settle private land claims in the State of California."

The 8th section of this act provides the mode of proceeding. And upon the evidence taken by the board they were to decide "upon the *validity* of said claims."

The 9th section provides for an appeal to the district court, and the 10th section for a further appeal to the Supreme Court of the United States.

The 12th section provides that "final decrees by said commissioners, or by the district or Supreme courts, "*shall be conclusive between the United States and said claimants.*"

By the 12th section act 31st August, 1852, (9 Stat., 99,) on failure

of the Attorney General to file an appeal, "the appeal shall be regarded as dismissed."

On the 30th March, 1853, the claim of Vallejo was duly presented to the board of commissioners, and on the 17th January, 1854, on the proofs and allegations taken in the cause, the claim was decreed to be "*valid*," and the same was then "*confirmed*." (P. 9.)

On the 18th February, 1856, an appeal having been taken to the district court, it was ordered, adjudged, and decreed, that the final decision of the commissioners be, and the same is hereby, in all things affirmed. And it is hereby further decreed, &c., that the claim of the appellee, Mariano G. Vallejo, be confirmed." (Page 12.)

The transcript for an appeal having been sent up to the Attorney General, the appeal was by him ordered to be dismissed on the 24th December, 1856, (p. 14,) under authority of the act of 18th August, 1856. (11 Stat., p. 102.)

The patent is delayed owing to the absence in the land office of a subdivision plat of the township. (See letter of Commissioner, p. 13.)

In the year 1854 the claimant presented his petition to Congress. It was referred to the Committee on Military Affairs; but on the letter of the Attorney General to the committee stating that an appeal was then pending, the committee declined to act on the case, and, under a resolution, it was referred to this court. (Page 11.)

These proceedings show that the title to the premises are conclusively established between the government of the United States and the claimant.

These acts do not confer a title, but constitute a governmental acknowledgment that the title derived from Mexico was valid in its inception, and therefore relates back to the date of the grant.

These evidence taken in this case to show the *invalidity* of the title, is therefore worse than idle. The government cannot impeach the grant in a collateral proceeding. If a fraud has been committed, the title could only be set aside by a direct proceeding which puts the fraud distinctly in issue.

Where a special jurisdiction has been conferred, this court has frequently declared that they could not inquire into the validity of its judgments. The opposite conclusion would be a clear usurpation of authority.

This court can no more inquire into the allegation of fraud here attempted to be shown than into the want of authority in the grantor, the want of capacity in the grantee, the non-compliance with the conditions of the grant, or any other matter which entered into the "validity" of the grant.

Upon this question of separating private property from the public domain, the government has selected its own tribunal to decide the controversy, and has in words declared that the final decree of that tribunal shall *be conclusive between it and the claimant*.

Failing to invalidate the title, the effort is made to show that the government ought not to pay for the use and occupation of the premises, upon some idea that Vallejo agreed that they should have them free of charge.

This is based on the deposition of Hooker, (pp. 73, 75,) who states that in June, 1849, and again "a year or two afterwards," he heard Vallejo, in conversation with General Persifer Smith, say that "the government was welcome to the use of the barracks for the troops. This conversation (he says) was so long ago that I can't remember the precise words; the idea is what I have stated."

Rain also testifies to a conversation in 1853, in which Vallejo said that if the government would "keep a company there, they were welcome to the use of the barracks; which was the amount of the conversation I heard every time." (Page 79.)

There is no pretence that there was ever any *contract or agreement with any officer* of the United States that they were to occupy the premises free of rent.

The premises were taken possession of by Lieut. Rivere, in July or August, 1846, in obedience to orders of Capt. Montgomery, and they continued to be occupied as a military post to 1853.

There is not a particle of proof from any officer in command that his occupation was in anywise connected with, or dependent on, an agreement that no rent was to be paid.

On the contrary, Major Allen, acting quartermaster under Generals Smith and Hitchcock, says, (p. 8:) "The question of ownership was not then settled, and I refused to rent in consequence." Again, at page 45, "a demand was made (for rent) by Captain Frisbie, as the agent of General Vallejo, verbally and in writing, in the year 1849. I refused to pay it, and have not paid it. The ground of my refusal was, that I did not recognise General Vallejo as the owner of the property."

If the occupation had at any time been induced by any such promise and agreement, some evidence thereof would have been furnished to the department.

The Quartermaster General states that the building was taken possession of as public property, and used as such during the period charged for, and no rent has been paid for the buildings. There has been no estimate and no appropriation made to cover the expenditure. "He is therefore of opinion that it is a claim for the special action of Congress." (Letter, July 30, 1855, p. 10.)

The Comptroller replies: "It appears from the evidence that this property was taken without the consent of the owner, and used for government purposes under the idea it belonged to the public." "Such claims are not estimated for, and are not within the scope of any appropriation acts. So far as the government is concerned, Congress can alone afford relief for the injury the claimant is said to have sustained." (Letter, January 30, 1855, p. 11.)

The remark of this court in Ericcson's case might be effectually invoked if this position was worthy an extended refutation. "The maxim of *nemo præsumitur donare* applies with great force to a case like the present, where the object of the bounty to be bestowed is a great and powerful government in possession of abundant means for all its legitimate purposes."

There is in truth but one question in the case, and that is, at what rate of compensation the claimant should be paid?

Quartermaster Snyder, Major Hardie, Quartermaster Folsom, and Major Allen—all officers of the United States, stationed at different periods—all certify that the amount charged for rent is correct.

It will be remembered that these certificates were given under official responsibility, for the purpose of having the account paid at the proper department.

In addition to this, *Capt. Frisbie* testifies that from 1848 to 1850 these buildings would have been worth from $400 to $500 per month. (Page 23.)

Israel Brockman testifies, "that from the way other property rented, (from 1846 to 1853,) these premises would be worth from $300 to $500 per month. From that to $600 perhaps." (Page 30.)

A. C. McDonald testifies that, "for the year 1849, a fair rent for that building would be $500 per month; for the year 1850, $400 per month; for 1851, $150 per month; and for 1852, $75 per month. (Page 33.)

W. M. Boggs testifies, "I am acquainted with the buildings and appurtenances. I have known them ever since I arrived in November, 1846. At the time I arrived they were occupied by persons serving the United States in the war with Mexico. They continued to be occupied from time to time by soldiers or volunteers until the United States troops finally left the barracks," &c. "The premises were worth from $300 to $500 per month for the time they were occupied by the troops, from my knowledge of rents there." (Pages 36, 37.)

Major Robt. Allen testifies, that on his former examination he had stated the value of the rent at $250 per month. "I judge this from the fact that I hired private buildings in Sanoma at the same time, the relative price, considering the value of the property, at a higher rate."

Cross-interrogatory by government. "Is all the knowledge you have in reference to the use or value of the rent of said barracks during the time you have spoken of, derived from the renting of other quarters and offices which you have mentioned?"

Answer. "Not entirely; I knew the value of property in Sonoma at the time and the usual rate of rents; and in this connection, having, as before stated, made a comparison of the relative value of property, I came to the conclusion that the charge made by Gen. Vallejo, &c., was very reasonable, and below the current of rule of the town. I can state that with a positive emphasis. (P. 44.)

As to the value of the rent the witnesses on the part of the government, depose as follows:

Joseph Hooker. "I should think $100 per month would be a fair rent for the premises during the whole period." (P. 74.)

On cross-interrogatory, he answers: "The government rented another building of nearly the same extent for the use of General Smith and his staff, &c., &c., &c. The rent was $450 per month." (P. 76.)

John Cameron. Question. What was the value, according to current rates at the time, of the rent of said barracks, &c., &c. That is, the average rent per month for the time they were occupied?

Answer. I cannot tell, sir.

Question. For how much per month during said time could they have been rented to any other person in the condition in which they were when you went there?

Answer. *I can't answer that question.* The first eight months after gold was discovered, they could not have been rented at all, &c.

Question. For how much, in your *opinion*, could they have rented for during the balance of the period after the eight months?

Answer. Well, sir, I *don't think* they could have been rented for more than $25 to $50 per month for the whole five years.

L. W. Boggs deposes, that in the winter of 1846–'7, without the roof, the premises would have rented for $50 or $60 per month. (P. 93.)

If the improvements that had been made on the buildings with the exception of the roof had been of such a character as to suit merchants and mechanics, it might have rented *for a great deal more.* (P. 94.)

Question. For how much, according to current rents, could the barracks with the roofs, if not accepted by the United States troops, from the time the roof was put on until you left Sonoma, have been rented for?

Answer. I say exactly what I said before, that in the dry season it might rent for $50 or $60, and in the wet season for more.

Cross-question. "If the government had been compelled to rent barracks or separate buildings for troops, store-houses, hospital, stables and storage for government property, at what rate could such accommodations have been procured?

Answer. It is impossible for me to say, for the reason that I do not believe sufficient quarters could have been obtained, &c.

Question. In view of the impossibility of obtaining such accommodation, would you regard $250 per month as an exorbitant rent?

Answer. Under such a state of things, I would not, but under ordinary circumstances I would.

A full description of the premises is at pages 99, 100.

Lieut. Rivere testifies, that he took possession in August, 1846, and left it in command of Lieut. Maury in November, 1846. "Fifty dollars per month would have been a fair rent for the barracks at that period." (P. 104.) He describes the premises as a "large adobe building about 100 by 40 feet in size, of two stories, containing ample accommodation for 300 men, with a court yard in the rear for horses, enclosed by a wall." (P. 103.) "The barracks were in a good habitable condition." I ought to state, that these barracks were divided into four rooms in each story; of those in the upper story two had no floors, and were not habitable without floors being laid. I did not need these two rooms for my men. The lower story rooms had earth floors. (P. 104.)

The premises, it will be observed, were of such a character that if not desired by the United States for barracks, were easily convertible, by a small improvement, into suitable accommodations for merchants or mechanics, and would thus be rendered very valuable at a time when there were few or any buildings for rent, as is stated in the deposition of L. W. Boggs

It is for the court to reconcile these discrepancies in the valuation of the premises. If an average is made of them all, it will be seen that

it amounts to as much as is charged in the account attached to the petition.

P. PHILLIPS,
Solicitor for Petitioner.

WASHINGTON, *March* 17, 1859.

IN THE COURT OF CLAIMS.

MARIANO G. VALLEJO *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for the rent or use of military barracks at Sonoma, California, which were occupied by officers and soldiers of the American army, during the late war with Mexico.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. The premises in question were occupied by the American troops for a portion of the time alleged in the petition in this case.

Second. The plaintiff had no title to the property in question, and therefore has no right to the rent he claims.

This is the great and important question in this case, and the consideration of all further questions of fact will be waived in this brief.

The plaintiff proves no title in fact, but seeks to have title inferred from incidental and extraneous circumstances.

1. The plaintiff was a Mexican citizen, and had a military and civil command in California at and before the time of the conquest by the United States.

Berryeza says: "He was generally the military commandant of arms of the frontier." (Record p. 55.)

"The military commandant, M. G. Vallejo." (Record p. 59.

Beasley's evidence: "Question. Who was then (in 1844 and 1845) in command of the Mexican troops at Sonoma, and in the northern district of California?

Answer. I think General Vallejo was on the northern side of the bay.

Question. Had General Vallejo at that time—that is, in the latter part of 1844 and fore part of 1845—troops under him at Sonoma?

Answer. There were a few troops kept there; they lived in their houses around the pueblo of Sonoma. The whole country was under him." (Record, p. 16.)

Beasley's evidence: "To the best of my knowledge, I think I saw the barracks there in 1844, or the walls. I don't think it was all covered at that time." (Record, p. 15.)

2. The building was suitable only for military barracks, and not for a dwelling-house for the plaintiff, or to rent.

L. W. Boggs's evidence: "It (the building) was a large two-story adobe building, covered with tile, four large rooms below and four above, with a wide hall, some sixteen feet wide, perhaps, passing

entirely through the building, both above and below, from south to north. It was divided by partition adobe walls, so as to make four large rooms below and four above. The partition walls were as high as the square of the building. There were no floors except dirt floors below, such as were used in California houses at the time. The two upper rooms in the front building had plank floors, and some accommodation, like bunks, for sleeping. The hall up stairs clear through was floored with plank. The two large rooms up stairs in the rear of the building had no floors, but the joists were there ready to receive flooring. There was a stoop or porch in front, and a pair of stairs that passed from the sidewalk to the upper rooms. There was no other mode of communicating with the upper part from the street but by the stairs and porch. There was a large back yard, or corral, enclosed entirely by an adobe wall, I think eight or ten feet in height, the entrance to which was, I think, principally through the lower hall of the barracks; and I think there was a passage through them for water, which was brought down from the mountain streams." (Record, p. 99.)

3. The barracks were constructed by and for the use of the Mexican government.

Berryeza's evidence: "Question. When you went to Sonoma in the year 1837, what buildings, if any, were there on the north side of the present plaza of Sonoma, and by whom, if any persons, were they occupied?

Answer. At that time there were none but the house of General Vallejo, and it was occupied by his family.

Question. Had he any enclosure surrounding or connected with said house?

Answer. All the part behind the house was enclosed with branches and vines planted there, and some fruit trees were in it.

Question. Was the cuartel or barracks at that time in existence, in 1837?

Answer. In the year 1837 only the foundation of the cuartel existed.

Question. Was the cuartel finished after you went there; and if so, when and by whom?

Answer. The cuartel was built in the years 1839 and 1840, and finished by the carpenters in 1841, under the direction of General Vallejo.

Question. Who built it?

Answer. The gentile Indians made the adobes, and the mission Indians worked as bricklayers. Some foreigners cut the lumber, and one Spaniard and some Americans made the carpenter's work. They were strangers. I don't know whether they were Americans or English. By cuartel I mean all the buildings and enclosures used for military purposes. By cuartel I understand the house for the garrison, arms, and ammunition, and all things belonging to the military service.

Question. Was the cuartel, which you have spoken of and described,

the same buildings and enclosures which were afterwards, and after the change of flags, occupied by the troops of the United States?

Answer. Yes, sir; they were the same." (Record, pp. 56, 57.)

"Question. You stated yesterday that mission Indians worked upon the cuartel in its erection. What mission Indians do you mean?

Answer. The Indians from the mission of San Francisco Solano.

Question. Where did the troops stay; that is, what place or building did they occupy as quarters previous to the erection of said cuartel?

Answer. The troops were quartered in one of the buildings of the same mission of San Francisco Solano, which served previous as a deposit of seeds.

Question. In whose hands were the temporalities or property of said mission at that time?

Answer. In the hands of Don Salvador Vallejo, or his mayor domas.

Question. For whom did Salvador Vallejo hold said property?

Answer. Salvador Vallejo was the administrator of the interests of the mission.

Question. Had the mission been secularized or not previous to that time?

Answer. It was already secularized.

Question. For whose use and account was said mission property held by Salvador Vallejo at the time the buildings you have mentioned were occupied by the troops and during the erection of said cuartel?

Answer. By order of the government, for the use of the Indians and the troops. I say by order of the government, because the government generally nominated the administrators.

Question. How long was Salvador Vallejo administrador of the mission of San Francisco Solano?

Answer. I did not know any person else but him during the existence of the property of the mission.

Question. Who was administrador when you came to Sonoma in 1837?

Answer. Salvado Vallejo.

Question. How long did he continue administrador of said mission of San Francisco Solano?

Answer. When the Americans entered, the office of administrador did not exist any longer. I don't know when he left, and did not hear of there being any property of the mission left at the time.

Question. Who procured the gentiles or wild Indians to work on in the erection of the said caurtel?

Answer. The troops brought them from the mountains.

Question. How were they induced to work?

Answer. Ordering them to make adobes.

Question. Who fed them whilst they were making adobes?

Answer. The administrador of the mission of San Francisco Solano.

Question. Did they receive anything else for their labor besides their food; and, if so, what and from whom?

Answer. The administrador gave them some blankets and some other things, as white cotton and other little things.

Question. For whom or under whose direction and in what manner were the mission Indians, whom you have mentioned, employed when not working on said caurtel?

Answer. The military commandant, M. G. Vallejo.

The question being repeated, the witness answers: They were subject to the service of the mission, under the direction of the administrador and mayor domas." (Record, pp. 58, 59.)

Berryeza's evidence: "Question. To whom did the provisions, blankets, white cotton cloth, and other things furnished to the Indians and others who worked in the building the cuartel, belong?

Answer. To the mission and presidial company of San Francisco at Sonoma. By mission I mean the mission of San Francisco Salano." (Record, pp. 62, 63.)

4. At the time of the conquest the barracks were occupied by the Mexican government for military purposes, and had troops, arms, and ammunition there.

Beasley's evidence: "Question. Were the barracks at that time, (1844 and 1845,) and down to the raising of the bear flag in 1846, used and occupied as a military post of the Mexican government?

Answer. There were Mexican troops there under General Vallejo, and there were cannon, arms, and muskets, &c., but they must have been under the Mexican government.

Question. How many troops, or what number, were stationed at Sonoma at the time you were doing this work?

Answer. There were a few there, but I never counted them. I never saw them drilled or in arms at that time about there.

Question. Where were the cannons, muskets, and other arms and military accountrements and stores of which you have spoken, in 1844–'5, whilst you were in Sonoma?

Answer. The arms I spoke of were kept in the barracks. I don't recollect of having spoken of any stores." (Record, pp. 16, 17.)

"Answer. It (the cuartel) was used prior to 1846 by Mexican soldiers and arms, and I *knowed* it as the barracks, and that is all I *knowed* about it." (Record, p. 20.)

Berryeza's evidence: "Question. Was there any vacant ground between the cuartel and the original branch and hide enclosure of General Vallejo?

Answer. Yes, sir.

Question. About how much?

Answer. About ten varas wide in front, and extended all the way through.

Question. How was the cuartel used, and by whom occupied, from the time of its erection until it was taken by the Americans in 1846?

Answer. By the presidial company of San Francisco.

Question. Was that the only company stationed at Sonoma, or were there others?

Answer. That was the only one. There was a time when a company of Indians were formed into a company of infantry, but it was disbanded."

"Answer. In the year 1846 there were many more persons (at Sonoma) than previously; but I cannot remember how many. When I went there in 1837, I think there were about fifty white women in all on the north side of the bay. When I arrived there, there were but two families living at Sonoma in addition to the troops, one composed of ten persons and the other of but two; in 1846 there were five or six families in addition to the soldiers." (Record, p. 60.)

"Question. Whose property was the cuartel and its enclosures and the grounds on which it stood?

Answer. It was considered as government property.

Question. Was it always so considered and used from the time the buildings were erected upon it until it was taken possession of by the Americans?

Answer. Yes, sir.

Question. Did you ever know or hear of General Vallejo's claiming the cuartel, its enclosures, or the grounds which they occupied, as his property down to the time it was taken possession of by the Americans?

Answer. No, sir; I never knew or heard of it." (Record, p. 61.)

Berryeza's evidence: "Was the cuartel, prior to its being taken by the Americans in 1846, ever used in any other way or for any other purpose than as a military establishment of the Mexican government?

Answer. It was never used otherwise than as a residence of the military garrison." (Record, p. 63.)

Revere's evidence: "I was in command of the barracks in Sonoma, California, in the year 1846. I took command of the post of Sonoma on the 4th of August, 1846, in obedience to the orders of Captain John B. Montgomery, commander-in-chief of the northern military district of California, and at once took possession and command of the barracks in question, and retained such command and possession until the 20th of November of that year. I found in possession of the barracks persons known by the name of 'the bear party,' whose flag was then hoisted and flying in front of the barracks, which I hauled down, and raised instead thereof the flag of the United States, on the 7th of July in that year, under a salute; but the formal taking of command by me occurred on the 4th of August, as I have above stated. I know nothing of my own knowledge as to who were in possession previously to his taking possession, which occurred on the 14th of June of that year, while I was on board the United States sloop-of-war Portsmouth, then lying in the harbor of San Francisco, except that I knew this post and the barracks were previously in possession of the Mexican government, and that 'the bear party' hauled down the Mexican flag when they hoisted their flag, on the 14th of June, as already stated. I hoisted the American flag on the 7th of July, by command of Captain Montgomery. I found upon the premises, on the 7th of July, these barracks, being a large adobe building, about 100 by 40 feet in size, two stories, containing ample accommodations for three hundred men, with a court-yard in the rear for horses, enclosed by a wall; and I also found within the barracks four or five brass cannon, either nine or twelve-pounders, and one or two field-pieces,

six-pounders. I cannot tell from memory certainly the number of these guns. I also found a hundred stand of muskets and bayonets, more or less, with the accoutrements, and a Mexican flag. These arms, the cannon, except one six-pounder, and the flag, were sent by me to San Francisco in the Plymouth's boats, by command of Captain Montgomery. There were a few Mexican soldiers remaining about Sonoma, who had been turned out of the barracks by 'the bear party.' These cannon and the arms and accoutrements were Mexican. We found in the court-yard also about three hundred horses, bearing different brands, many of them the brand of two hearts so united as to resemble a triangle in shape." (Record, p. 103.)

5. The defendants did not enter under the plaintiff, nor did the latter claim rent at that time.

Quartermaster Allen's evidence: "Answer. A demand (for rent) was made by Captain Frisby, as the agent of General Vallejo, verbally and in writing, and in the year 1849.

Question. Did you refuse to pay the account for rent of the barracks presented by Captain Frisby, as General Vallejo's agent, at the time it was presented; and, if so, why did you refuse to pay it?

Answer. I did refuse to pay it, and have not paid it. The ground of my refusal was, that I did not recognize General Vallejo as the owner of the property." (Record, p. 45.)

Revere's evidence: "I took command of the post of Sonoma, on the 14th of August, 1846, in obedience to the orders of Captain John B. Montgomery, commander-in-chief of the northern military district of California, and at once took possession and command of the barracks in question, and retained such command and possession until the 20th of November of that year." (Record, p. 103.)

"I did meet with General Vallejo while in command at Sonoma, and resided at his house during that time. He did not, at any time, claim rent for the barracks from me, nor from any officer under me, to my knowledge." (Record, p. 104.)

6. The United States, believing that the barracks were, when they took possession, the property of the Mexican government, made expensive repairs and improvements thereon, while plaintiff, who resided at Sonoma and was present, gave no notice of his claim, and he is now estopped from questioning their rights.

Hooker's evidence: "I never saw the barracks until after the troops were quartered in them. When I first saw them (in June, 1849,) they were deficient in floors, in partitions for store-rooms, and for the hospital, and they may have been without windows; it seems to me that they were. These deficiencies of floors, windows, partitions, and rooms for the store-rooms in the lower story, and staircase outside of the building, were all put up at the expense of the United States." (Record, p. 74)

On being asked if he had any knowledge whether the United States were at the expense of these improvements, the witness answered:

"I have; the lumber was sent from Benicia, and was sent for that purpose, or the greater part of it; and the work was done by the artificers of the company stationed there. A requisition was made upon the depot quartermaster at Benicia for the lumber for that pur-

pose, and it was sent accordingly. There may have been other lumber used for that purpose of which I have no knowledge." (Record, pp. 75, 79.)

L. W. Boggs's evidence: "Question. Were any improvements made upon said building; if so, please state when, by whom, and the different improvements that were made.

Answer. Whilst I was residing at Petaluma, during the winter of 1846, I saw an advertisement issued by Lieutenant Maury, of the navy, the commanding officer there, offering to receive proposals for putting on a new roof upon the barrack—taking off the old roof of tiles and putting on a new one; the new roof was to be of shored three-foot clapboards. That work was undertaken and completed by James A. Griffith. The tiles of the old roof were delivered to General Vallejo as they took them off. The work was finished after I went to Sonoma, I think before Captain Brockett's company came there. Griffith was the contractor, and Lieutenant Maury, on the part of the government, had the work done. I think Captain Brockett, after he came with his company, had some improvements made. I think the lower room on the corner of the plaza he had fixed for his own quarters; and it was a tolerably large room, and I think was partitioned off and floored, and I think one window and a door cut; and I think a room was partitioned off to accommodate the medical and hospital department; there was a door and window put in on the plaza where the captain's quarters were. This was done in the spring of 1847." (Record, page 92.)

Although during all this time the plaintiff resided on the lot adjoining the barracks, he does not show that he notified those engaged in making these improvements that he was the owner of the premises in question.

7. Sonoma was not laid out as a town until 1840, when the plaintiff laid it out and caused a plan of it to be made.

Berryeza's evidence: "Do you know when Sonoma was first laid out as a town?

Answer. 1840 was the first time.

Question. By whom?

Answer. By General Vallejo.

Question. Were you present?

Answer. Yes, sir.

Question. Did you take any pains in laying out or measuring; if so, what?

Answer. Yes, sir; I helped General Vallejo and others in measuring the same.

Question. Was there any plaza, or were there any blocks or lots marked out by defined limits previously to the time you have mentioned?

Answer. No, sir. The only place was that where General Vallejo's house was situated. There were three places fenced and measured; one was General Vallejo's, one was Salvador Vallejo's, and the other was the cuartel.

Question. What do you mean by three places being measured prior to the time you have mentioned?

Answer. In the year 1837, that I was on that side of the bay, I saw that the house of General Vallejo was fenced at the rear of the same. After my staying there the house of Salvador Vallejo was built, and an adobe fence was built at the back of the same. The cuartel was also built whilst I was there, and a corral was formed at the back of the same, and fenced with an adobe fence.

Question. What kind of a fence was that which composed the enclosure of about and in the rear of Vallejo's house?

Answer. When I arrived there it was a fence made of branches of trees tied with hides, and afterwards it was taken down and replaced by an adobe one.

Question. Was it taken down and an adobe one built before or after the building of the cuartel?

Answer. Afterwards.

Question. Was there any vacant ground between the cuartel and the original branch and hide enclosure of General Vallejo?

Answer. Yes, sir.

Question. About how much?

Answer. About ten varas wide of front, which extended all the way through. (Record, pages 59 and 60.)

Question. Were the enclosures which you have spoken of, of General Vallejo, of Salvador Vallejo, and the cuartel and its enclosures, all situated upon the block on the north side of the plaza of Sonoma as it was laid out in 1840, as you have stated?

Answer. All of them were on the north side of the plaza, and in the same block. (Record, page 61.)

Question. Was there a plot of Sonoma made at the time you assisted General Vallejo in measuring and laying it out, as you have mentioned, in 1840; and, if so, by whom was it made?

Answer. There was one made by a painter named Augustin Davilla.

Question. How many blocks, as near as you can state, were measured and laid off at that time, and represented upon that plot?

Answer. I remember clearly the four that formed the four sides of the plaza; I do not remember all; there were several. I remember of one to the east of Salvador Vallejo's lot and house; I remember this as there were some houses on it. I remember only those that formed the four sides of the plaza, and the one west of Salvador Vallejo's.

Question. Was this plan made by Davilla the first that was ever made of Sonoma?

Answer. It was the first one that I knew; I never knew of there being any other, nor did I ever hear of one.

Question. From your residence at Sonoma, and position as alcalde of said place in the year 1846, did you become familiar with all the grants of lots there?

Answer. There was a book where there were some recorded, and some loose leaves, copies of other grants attached to the book. I am speaking of the year 1846, when I was alcalde.

Question. Was there at that time in the alcalde's office any evidence of a grant of any portion of the block on the north side of the plaza to M. G. Vallejo?

Answer. I don't remember having seen any.

Question. Had you charge of the archives at the time you were alcalde at Sonoma, and were you familiar with the grants there?

Answer. The archives were in my office, and I was familiar with the grants." (Record, p. 61.)

8. The plaintiff has neither shown possession nor title to the premises prior to or during the occupancy by the United States.

The evidence is full and clear that the only possession prior to that of the United States was by the Mexican government.

No grant from Mexico to the plaintiff is either set up in the petition or proved by him in the evidence.

If he claims under the supposed grant of the 5th of July, 1835, by Figueroa, the following answers are made:

First. That grant does not conform to the statute of 1824 nor the regulations of 1828 in either of the following particulars:

1. There does not appear to have been any petition setting forth the name, country, profession, the number, description, religion, and other circumstances of the party, nor a map of the lands asked for.

But these things are required by the second colonization regulation, which is in these words:

"2. Every person soliciting lands, whether he be an impressario, *head of a family*, or a *single person*, shall address to the governor of the respective territory a petition setting forth his name, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing as distinctly as possible, by means of a map, the lands asked for."

2. The governor did not obtain the information with regard to the land or applicant required by the third regulation.

This regulation is as follows:

"3. The governor shall proceed immediately to obtain the necessary information, whether the petition embraces the necessary conditions required by the said law of the 18th of August, 1824, both as regards the land and the applicant, in order that the petition may be at once attended to; or, if it be preferred, the respective municipal authority may be consulted whether there be any objections to making the grant."

3. There is no evidence that a document was signed by the governor in conformity with the 8th regulation, nor that a record was made in conformity with the 9th.

4. This grant was of 19,500 (150 by 130) varas, whereas a building lot could, by regulation 15, be only for ten thousand, that is one hundred varas square.

5. There is no evidence that it was approved by the departmental assembly, or any return thereof made to the supreme government, and none of erecting a house or taking possession within one year.

In the *United States vs. Cambieston*, 20 How., 59, the Supreme Court held that these requirements were necessary, and that court refused to confirm a grant because they did not appear to have been complied with. The court also held that the recitals in the grant could not be regarded as satisfactory evidence of thes facts, but that they must be proved like other facts by legal evidence.

Second. The proof is conclusive that Sonoma was not, in 1835, a city, nor had it been laid out into blocks, but that all this was done by the plaintiff five years afterwards, in 1840.

Third. If there had been a grant in 1835, the terms and conditions had not been complied with, and the Mexican government in fact repossessed itself of the premises and made erections thereon and occupied the same before the United States took possession.

Fourth. In laying out Sonoma as a city, in 1840, the plaintiff put the premises in question down on his plot as public property, a cuartel for military purposes, in conformity with the truth of the case.

Fifth. The assumed title paper on file in the office of the surveyor general of California is not a genuine paper, but a forgery.

Dioz's evidence: He swears that he knew the signatures of Figueroa and Zamarano, and that he had examined the paper on file, and says of the signatures:

"Neither of them are genuine; Mr. Zamarano's don't resemble it at all; that of Figueroa, they wanted to imitate it, but it looks very little like it.

Question. Did Zamarano hold any public position during the month of July, 1835; if so, please state what position?

Answer. He did hold the position of captain of engineers and secretary to the political chief or governor.

Question. Do you know in whose handwriting the body of said original paper A is?

[The counsel for the claimant objects to the above question.]

Answer. I do not know it.

Question. Is it or not in the handwriting of Augustin V. Zamarano?

[The question is objected to by counsel for claimant.]

Answer. No, sir.

Question. What were the duties of secretary of the political chief or governor of California, in July, 1835?

[The counsel for claimant objects to the above question.]

Answer. I do not know.

Question. Was Sonoma, in the year 1835, called a city, (ciudad?)

Answer. No, sir.

Question. Was there, upon genuine title papers issued by Figueroa, any seal; if so, what seal?

Answer. There was; a government seal.

Question. Has the original of paper A that government seal upon it or not?

[The counsel for claimant objects to the above question.]

Answer. No, it had none." (Record, pp. 48, 49.)

Berryeza's evidence: Question. Are you, or not familiar with the handwriting of General Mariano G. Vallejo; and, if so, in what manner have you become familiar with it?

Answer. I am very familiar with the handwriting of General Vallejo, and I became familiar with it, having continued to write with him at the same table during several years, as aforesaid.

Answer. I went to Sonoma to live in the month of June or July, 1837, and I left it in the year 1849.

Question. In what manner were you employed at Sonoma, from the

time you went there in the year 1837, down to the time you left there, in the year 1849?

Answer. In the month of March, 1837, I began the military career in Santa Clara, at the mission, and, in my military capacity, I went to Sonoma in the month above mentioned, in which career I followed until the year 1845, at which time I left the service; and the balance of the time from 1845 to 1849 I was living at my ranche, with the exception of a short time in 1846, at which time I was alcalde at Sonoma; I was alcalde from the 5th of March, 1846, until the time when the Americans came to Sonoma, in July; the Americans came in June, under the bear flag, but I was alcalde till July.

Question. What was your position, and in what manner were you employed at Sonoma, whilst connected with the troops there, or, as you say, in the military career?

Answer. I was a private soldier until January, 1838, and during that time I was generally occupied as secretary or writer for General Mariano G. Vallejo; from the 1st of January, 1838, I became corporal, and so continued till February, 1839, being occupied during the time as a writer for General Vallejo; the 1st of February, 1839, I was promoted to the position of first sergeant of the presidial company of San Francisco, which company was located at Sonoma, on the frontier; in the year 1844 I was elected by the officers of the company as treasurer for said company, which was approved by the general, Micheltoreno, until the month of June, 1845, at which time I permanently retired from the service.

Question. From the 1st of February, 1839, when you were promoted to the place of first sergeant, down to the time of your retiring from the service, in the year 1845, were you employed by General Vallejo in any manner; and, if so, in what?

Answer. Regularly writing for him in the office of General Vallejo.

Question. Who commanded the troops at Sonoma from the time you were there until you quit the service?

Answer. In the year 1837 Don Guadalupe Vallejo was commander. (Record, pp. 55, 56.)

Sanchez's evidence: This witness states that he knows the handwriting of the plaintiff and of José Figueroa and Augustin N. Zamarano. He is then asked if he had seen the document in the surveyor general's office, referred to by Dias, and answers: "Yes, sir; I have seen it; I saw it half an hour ago in the surveyor general's office in this city, and in this building.

Question. In whose handwriting is the body of said original?

Answer. I believe, so far as the knowledge I got of it, it is in General Vallejo's same (own) handwriting; I mean General M. G. Vallejo.

Question. In whose handwriting are the signatures to said original?

Answer. They appear to be in the same handwriting as the body. As they appear in the original. they look like the same handwriting, as the body—that of General Vallejo. (Record, p. 69.)

Question. Are the names José Figueroa and Augustin N. Zamarano, or either of them, upon the original of document A, which you

saw in the surveyor general's office, in the genuine handwriting of either of these persons?

Answer. No; neither Figueroa's or Zamarano's." (Record. p. 70.)

There is no evidence contradicting this, and therefore it may be considered as undisputed and conclusive that the plaintiff has no title whatever to the premises in question, and consequently no claim to rent for their use.

LEGAL PROPOSITIONS.

FIRST. *This is not a case within the jurisdiction of this court, because it does not arise under an act of Congress, a regulation of a department, or under a contract, express or implied*

There is no pretence that this case arises under a law of Congress or a regulation of a department. Nor is it assumed or stated in the petition that it arises under a contract, express or implied; nor is there proof of a promise to pay. The evidence establishes the fact that the United States took possession of the premises as conquerors, by the strong arm of military power, and held them as such during the war. It shows that they were taken, not as private, but as the public property of the Mexican government, and that the United States occupied them as such, and repaired them as owners and not as tenants.

If the barracks belonged to the Mexican government at the time, then they became the property of the United States, and no injury was done to any one.

If they belonged to the plaintiff, the United States, under the laws of war, had a perfect right to take possession of the barracks and use them for military purposes, at least during the war, without making compensation therefor. After, as well as during the war, the United States occupied, claiming title thereto. Under these circumstances no promise to pay rent can be inferred. It follows that this is not a case within the jurisdiction of this court.

SECOND. *The fact that the barracks were erected by the Mexican government, and were used and occupied for military purposes by it down to the time they were wrested from it, and the plaintiff's allowing the United States to take and occupy and improve and purchase them without notifying them of his claim of title, proves the title not to be in him, and estops him from now asserting it in himself.*

The evidence clearly shows that the barracks were erected by Mexico, and were used for military purposes, and that Mexican arms, &c., were found in them when the United States took possession. Horses collected by Mexico for military purposes were found in the corral. The whole were considered and treated as belonging to Mexico. The plaintiff resided on the same block, and set up no claim to the barracks or anything found there. He gave no notice of his claim upon the premises. He saw the United States repairing, at a heavy expense, without informing the officers in command that he was owner, and that the repairs would be lost if made. Under such circumstances the law will estop the plaintiff from making a claim.

The United States purchased these premises as Mexican property, without an intimation that it had been conveyed to the plaintiff. He stood by and permitted this to be done, and the repairs to be made, and gave no notice that he owned the property. The presentation of an account for rent by Frisby was not until three years afterwards, and it is not shown that he acted by authority. The plaintiff, by his acts and silence, has misled the United States, if he was owner. He cannot now change his attitude, and avoid the effects of his own acts and omissions. He is bound by them, and cannot recover.

THIRD. *The plaintiff has shown no title to the premises in question.*

The plaintiff has not set up in his petition that the premises were ever granted to or, in fact, belonged to him. No grant is proven by him. Nor has he offered any evidence of actual possession prior to the American troops taking possession, nor at any time previous to the end of their occupancy.

His whole pretence of title rests upon the act of the land commissioners in 1854, and of the district court of California in 1856; the first confirming a land claim, and the last affirming the decision of the commissioners. This evidence will not avail him, for the following reasons:

1. There is no sufficient proof that the premises confirmed are the same identical premises for the use of which payment is claimed.

The description of the premises in the decrees is as follows: "Commencing at the corner next the ex-mission of San Francisco Salano, and extending to the west, said lot being one hundred and fifty varas front, and one hundred and thirty deep; reference for further description to be had to the grant, marked B, and which is filed in this case."

The grant which is referred to for further description is not put in evidence by the plaintiff.

This location is not identified by his evidence, and therefore it is not proved that the land confirmed is the same as that occupied by the United States.

2. The confirmation took place after the occupancy of the premises by the United States had ceased, and the decree affirming the plaintiff's title took effect only from its date.

There is no evidence on the part of the plaintiff of the date of the title under which he claims. That put in by the defendant cannot avail the plaintiff, because it is proved to be a forgery. Under these circumstances, the decree of the land commission and court can only take effect from the time of the rendition of the former, and the occupancy complained of was all prior to that date, it having ended in August, 1853.

But the plaintiff insists that the decree is conclusive against the United States, and must relate back to a period anterior to the occupancy of the premises by them. The law under which this position is assumed is in these words:

"That the final decrees rendered by said commissioners, or by the district or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States

and the said claimants only, and shall not affect the interests of third persons."—(9 U. S. L., p. 634, § 15.)

The meaning of this provision is, that the decrees and patents not fraudulently obtained shall bar all further claim by the United States.

The design was to foreclose their pretensions to title, but not to determine when that title took effect.

The plaintiff came into court by his petition, and claimed that such matters had transpired between him and the Mexican government; that he had an equitable claim to the premises, and that the United States ought, through the proceedings before the commissioners and courts, to confer on him the legal title, and that, as evidence thereof, a patent ought to be issued to him therefor. The very proceedings admit, in effect, that the plaintiff had no legal title at the time; but he claimed to have it conferred, and to be furnished with evidence of it. The legal title thus conferred can have no effect prior to its being granted. The decree does not attempt to give it effect before the time of conferring. Under the law and these proceedings, the United States close all future claim, and say to the claimant, We will make no further demand; we give up what was legally ours on account of the equity which you have set up and the court have decreed. But neither the decree nor the law fixes a date when the plaintiff's legal title shall take effect.

The plaintiff contends that this confers legal title back to 1846, and authorizes him to recover for use and occupation subsequently to that time from the party of whom he derives his legal title under the decree of 1854, who occupied, not under the plaintiff, but by virtue of conquest and a treaty grant. It is clear that he can claim nothing under his legal title before he acquired it, and that has no date but that of the decree itself. If he claims now under his assumed equitable title, there are two conclusive answers; first, that he has not proved such equitable title in this case; and, second, the defendants have proved that pretended equitable title to be fraudulent, forged, and a nullity. His pretended equity has no foundation in fact to stand upon, while his legal title dates subsequent to this claim. No court will expand the doctrine of relation so as to make it violate the rules of equity, and give effect to fraud and forgery, and thereby injure a party acting in good faith, to benefit one who has acted exactly the reverse.

FOURTH. *The evidence of the decree of the land commissioners and of the district court is not sufficient to prove that either had jurisdiction, or rendered a valid and binding judgment.*

The evidence offered seems to be extracts from a decree and an affirmance, and not the record thereof. The whole record is not produced, nor anything to show that either the commissioners or court had jurisdiction to act. There is no petition, in conformity with the statute, and nothing to show that a land case was lawfully before the commissioners, or that either party appeared to prosecute or defend. There is no evidence that the case was before the district court in a manner authorized by law, nor is there any that either appeared. No jurisdiction is shown, or even averred. The land

commission act (9 U. S. L , 631, '2 and '3) points out how jurisdiction of the commissioners and district court shall be acquired and exercised. It is special as to both. There is no evidence of conformity with this act, either in bringing the case before the commissioners or the court. Even the grant containing the description of the premises claimed is omitted in this scrap of a record.

These extracts or parts of records cannot be received as evidence, because they are imperfect, and show upon their face that there is something behind necessary to a full understanding of the assumed adjudication and decision. This being so, they are not evidence, and cannot be received as such.

Res judicata is never recognized and held to be binding and conclusive upon the parties, except where it appears from the record that the tribunal adjudicating had full jurisdiction and authority to render the judgment set up as concluding the parties. This jurisdiction must appear from the record itself. In cases where there is no evidence of writ and service, or appearance, neither can be presumed in order to give jurisdiction, nor can they be proved by evidence *de hors* the record. On the contrary, the record must show on its face the matters proving jurisdiction, as well as the judgment rendered, and if it does not, the record proves nothing material and pertinent. It follows that the plaintiff has not established title to the premises in question, and consequently he has not shown that his property was used by the defendants.

The other points in this case are fully developed in the brief of the deputy solicitor.

R. H. GILLET, *Solicitor.*

APRIL 29, 1859.

IN THE COURT OF CLAIMS.

MARIANO J. VALLEJO *vs.* THE UNITED STATES.

LORING, J. delivered the opinion of the Court.

The record shows that this case was referred to this court by a resolve of the Senate on April 30, 1856, and that afterwards a petition was filed here by the claimant.

On the 4th of August, 1846, the United States, then at war with Mexico, took possession of a building on the square of Sonoma, called in the evidence the cuartel or barracks; it was at this time in the possession of the revolutionists in California, known as the "bear party," and had previously been in the occupation of Mexican troops under the command of the petitioner as military commandant of the district. Munitions of war belonging to Mexico, and 300 horses, branded with different brands, were found in the barracks and captured by our troops.

The United States occupied the barracks as soldiers' quarters from August 4, 1846, (Record, p. 103,) to the 16th of August, 1848, (R., p. 35;) they were then left by the United States, and came into the possession and occupancy of the petitioner, (R., pp. 88, 93;) in the

month of June, 1849, (R., p. 44,) they were again occupied by the soldiers of the United States, and continuously thereafter until the 8th of January, 1852, when they were delivered in charge to Mr. Bartlett, an agent of the United States, (R , p. 44,) appointed by the United States chief quartermaster for the Pacific division, and they remained in the use of the quartermaster's department until August, 1853, (Sol. brief, p. 13.)

The petitioner alleges that the premises thus occupied by the United States belonged to him, and he claims to be paid for such occupancy as follows:

From July, 1846, to July, 1848, 24 months, at $200.....	$4,800
From July, 1848, to July, 1851, 36 months, at $300.....	10,800
From July, 1851, to August, 1853, 25 months, at $200.....	5,000
	20,600

The evidence shows that the premises were taken possession of by the United States in its war with Mexico as property belonging to the enemy; whether it then belonged to Mexico or to the petitioner it was enemy's property, liable to seizure, and so it continued to be until the ratification of the treaty of Gaudalupe Hidalgo, May 30, 1848, (U. S. L., 9 vol., 922;) and until then no contract or liability for rent could arise from its occupation by the United States.

To the petitioner's claim for rent subsequent to May 30, 1848, it is objected on the part of the United States—

1. "That the petitioner has shown no title to the premises in question"

The eighth article of the treaty declares that in territories previously belonging to Mexico "property of every kind now belonging to Mexicans not established there shall be inviolably respected," and that the owners "shall enjoy, with respect to it, guarantees equally ample as if the same belonged to the citizens of the United States."

And the 9th article of the treaty declares that Mexicans "who shall not preserve the character of citizens of the Mexican republic shall be admitted at the proper time to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution, and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property."

By the articles specified the United States renounced from May 30, 1848, all right as captors over real estate situate in California belonging to individuals formerly citizens of Mexico, and assured to the owners of such property the full enjoyment of their rights of property. Therefore, after May 30, 1848, the United States would be as liable for their continued occupation of such property as they would be for their occupation of private property situate in Washington; and on their occupation in the one case, as well as the other, a contract would arise with the owner to pay a fair equivalent for the occupation, as rent.

By the act of Congress of March 5, 1851, (U. S. L., 631,) entitled "An act to ascertain and settle the private land claims in the State

of California," a commission was appointed for the purpose specified. Its mode of procedure was prescribed by the act, which provided for a review of the decision of the commissioners by the district court, (sec. 9,) and for an appeal from the judgment of the district court to the Supreme Court, (sec. 10.)

The evidence shows that the petitioner presented his claim of title to the premises, before the commissioners; that such claim was duly heard and adjudged to be valid, and the premises decreed by the final decree of the commissioners to be confirmed to the petitioner, (pages 9, 10, 12;) that an "appeal from the final decision of the commissioners was taken on the part of the United States to the district court of the United States for the northern district of California. and that the cause was heard at a stated term of said court, counsel for appellants and appellee having appeared," when it was "ordered, adjudged, and decreed, the final decree and decision of the said commission be, and the same is hereby, in all things affirmed; and it is hereby further ordered, adjudged, and decreed that the claim of the appellee, the said Mariano G. Vallejo, be confirmed."

It was alleged and admitted at the hearing here that an appeal from the judgment of the district court to the Supreme Court was taken by the United States, and that afterwards the appeal was ordered to be dismissed by the Attorney General. A certificate from the office of the Attorney General that such an appeal was ordered by him to be dismissed is part of the evidence in the case. The dismissal of the appeal left the case as if such appeal had never been taken and the proceedings had ended with the affirmatory decree of the district court; and that decree, therefore, under the act of March 3, 1851, makes the petitioner's evidence of title here.

Against this decree it is objected on the part of the United States that the decrees affirming the title of the petitioner were rendered on a grant to him made in 1835, and set forth in exhibit A, (Record, pages 53, 54,) and they allege and offer evidence to prove that this grant was a forgery, (depositions of Diez, page 47; Berreyeza, page 54; F. Sanchez, page 68.) But the United States are barred from any such defence. The fifteenth section of the act of March 3, 1851, enacts as follows: "That the final decrees rendered by the said commissioners or by the district or Supreme Court of the United States, or any patent issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons."

The parties here are precisely those between whom the statute makes the decree in evidence conclusive, and precludes this court and all others from any examination into the merits of the case in which the decree was rendered. Besides, the validity of the petitioner's title has been put to proof by the United States before a tribunal having full jurisdiction over that special matter; and by the general rule of law, the decree of that tribunal, unappealed from and in full force, cannot be called in question before any other. It is objected that there is no proof that the premises confirmed are the identical premises for which payment is claimed. The decree gives the locality, viz: "on the square of Sonoma," and the mete or point of beginning for the boundaries,

viz: "commencing *at the corner next the ex mission of San Francisco*, and extending to *the west.*" Then the evidence (Beasley, p. 8,) shows that the buildings of the old mission "are *east of the barracks*, and just across the street." So that the premises are *the corner next west* of the mission buildings, in the square of Sonoma, and called *the barracks*. Then the whole evidence shows that the claim is for *the occupation of the "barracks"* or cuartel, and that these were occupied by the soldiers of the United States, and no other building in the square was so occupied, (p. 23.) Then the decree of the district court states the premises confirmed were then in possession of Vallejo, (February, 1856;) and the evidence shows that the barracks or cuartel came into the possession of Vallejo on the departure of the troops in 1853, (p. 89,) and so continued till February, 1858, (R. p. 29.) It is true that the decree of the district court refers to a grant B, which is not produced; but such reference is, as stated, only for a "*further description,*" supplementary to that by metes and admeasurements given in the decree; and the grant B is not necessary when a sufficient description is made without it.

It is then objected that the confirmation of the petitioner's title took place after the occupancy of the United States had ceased; and it is contended that the decrees of the land commission and of the district court can take effect only from the time of the rendition of the former. This is true, for the decrees did not create the petitioner's title; they only ascertained and settled it as existing at the time of his claim. But the evidence shows that when the troops of the United States, after an occupancy from 1846, abandoned the premises in 1848, they came into the possession of Vallejo, and so continued until 1849, when the United States renewed their occupancy; and that when they again abandoned the premises in 1853 they came again into the possession of Vallejo, and so continued till the decree of the district court and thereafter. This evidence of possession, coupled with the decree, carries the title declared by the decree back for the whole time of the occupancy by the United States, and makes a *prima facie* title for the petitioner for all that time. Besides, the evidence carries the possession of Vallejo back to 1839 and 1840. The United States offered evidence to show that such possession was as an officer of Mexico of her public property; but the evidence is incompetent for the purpose and insufficient. Title cannot be shown by mere reputation and conjecture of witnesses; and the employment of the Indians of the mission on the barracks, and the occupancy of the barracks by Mexican troops, which is all the evidence, are not inconsistent with Vallejo's title. The evidence offered, moreover, goes to show title in Mexico only, and that was involved in the litigation before the commissioners and district court; for title in Mexico when the United States first took possession in 1846, would have made title in the United States. The decree, therefore, is proof that Mexico did not own the premises when the occupation of the United States began.

It is objected that from the circumstances, that the troops of Mexico with their munitions of war had occupied the buildings, and that as the petitioner stood by and saw the United States take possession, and

expend money in repairs, and make no claim of title or for rent, he is estopped from setting up his present claim for rent.

But until may 30, 1848, the premises were enemy's property, and subject to seizure and occupancy by the United States, and there was no ground for claim of title of rent by the petitioner; that Lieutenant Riviere negatives such claim in 1846 amounts, therefore, to nothing; and the material repairs were made in 1846 and 1847, and chiefly by taking off the old roof of tile and putting on another, and the United States then held the premises in their own right as lawful capture, and were free to act their own pleasure; but the evidence shows (pp. 92, 100) that the old tile were delivered to Vallejo, and indicates, at least, that his claim of title was known to Lieutenant Maury, by whom the repairs were made, and who succeeded Lieutenant Riviere in command. Then Colonel Hooker shows that Vallejo claimed title to the premises in June, 1849, (p. 73,) and Quartermaster Allen shows that the petitioner, by his agent, Frisbie, both verbally and in writing, claimed rent in 1849, (p. 45,) and Quartermaster Allen was the proper officer of the United States to make such demand upon. Besides, the facts are, that although the United States declared by the treaty, May 30, 1848, that the property of individuals should be respected, yet this property had been seized, and was held by the officers of the United States as the public property of Mexico, (Allen, p. 45,) and until the question of title was settled, claim of title or rent upon the officers of the United States was useles and inefficient for any purpose. Those officers were not agents of the United States to receive, or admit, or act upon any such claims.

It is claimed in the brief of the deputy solicitor that "the petitioner either agreed expressly to permit the troops to occupy the house rent free, or by his acts purposely induced the agents of the United States to believe that no rent would be demanded, and, after having stood by, cannot be permitted to set up such a claim."

The only evidence of any such agreement is in the depositions of Colonel Hooker (p. 73,) and of Rain, (p. 78.) Coloner Hooker states that in June, 1849, the petitioner "said the United States were welcome to the use of it (the barracks) for the troops," and that "perhaps a year or two afterwards he expressed the same matter." But Colonel Hooker says that he cannot state the words Vallejo used, so that his whole testimony is his undersanding at the time of words not recollected, and addressed to somebody else; and it is also observable that, as Colonel Hooker first stated the declaration of Vallejo, or its substance, the language does not necessarily mean anything more than that the United States were acceptable tenants. Rain (p. 79) states that some time in 1853, and in summer or fall, he thinks Vallejo stated that the government had the barracks free, and was welcome to have them again if they would send the troops there, and (pp. 80, 82) he states Governor Boggs was present. But it is observable that this witness testified after seeing and conversing with Colonel Hooker, and that Governor Boggs has no recollection of ever hearing from Vallejo the declaration in question, and was not in Sonoma (p. 98) at the time Rain alleges the declaration was made. All this discredits Rain's statement, and his other similar statements, so that he adds nothing

to the testimony of Colonel Hooker; and this is insufficient to prove that the petitioner ever meant to give to the United States the use of property capable of accommodating three hundred soldiers and their appurtenances for an indefinite time, when rents were high, and his neighbors were receiving for the use of similar property $450 per month, and after the United States had declared the rights of such property should be assured to their owners. All this is most improbable, and therefore requires strong and clear testimony to support it. The suggestion that the petitioner, at so great and immediate cost to himself, sought the welfare of the town of Sonoma, and so indirectly his share of benefit as a land owner there, lacks probability. And the suggestion that his motive was the repair of his building by the United States is not sustained by the evidence; that shows (pp. 92, 93, 99, 100, 101,) that the new roof, the flooring of the lower room, the partitions, doors, &c., for the accommodation of hospital stores and the quartermaster's department, windows, &c., were made in 1846 and 1847, when the United States held in their own right as captors, and there was no reason for believing they would become tenants to the petitioner; the only other repairs to the building shown by Colonel Hooker, (p. 74,) are boarding two upper floors and an outside staircase; and the lumber for the expensive sheds, &c., that he speaks of (p. 77) was removed by the United States when they abandoned the building, (p. 77.) Quartermaster Allen, whose official duty and control of these quarters commenced in June, 1849, and continued until the troops left, recollects no improvements made during his administration, (p. 45.) Besides, the allegation that the United States were to have the premises rent free, and the evidence adduced for its inference, are repelled by the fact testified to by Quartermaster Allen, that the petitioner demanded rent of him verbally and in writing in 1849.

Upon the facts, and for the reasons stated, it is considered that the United States from May 30, 1848, (when by the treaty they declared that the full enjoyment of rights of property in California should be assured to their owners) are legally liable, by reason of their occupancy of the property of the petitioner, to pay him a reasonable rent therefor.

The general description of the premises when first occupied by the United States is thus given by Lieutenant J. W. Revere, (p. 104:) "The barracks were in a good habitable condition for accommodating three hundred men while occupied by me, and when yielded up by me to Lieutenant Maury in December," (1846.) At this time two of the upper rooms were not floored; the other upper rooms were laid with joist for flooring only; these latter were afterwards floored, and other repairs were made by the United States; these repairs could not enhance the rent, nor can they diminish it, for a tenant cannot repair or improve the condition of the premises at the expense of his landlord without a special contract therefor.

In reference to the fair annual value of the premises, the statements and estimates of the witnesses are very variant. And this may be attributed to the facts stated by Governor Boggs, who says, (p. 96:) "I don't know of any current rates; it was just as people made their

bargains; it depended altogether upon the comfort and suitableness for the purpose for which buildings were wanted."

The witnesses on the part of the United States estimate the rent as follows:

Colonel Hooker, (p. 74,) at $100 per month for the whole term.

Cameron, (pp. 85, 86,) at $25 to $50 per month for the five years.

Governor Boggs, for emigrants in the dry season, at $50 to $60 per month, and in the wet season at something more.

While the witnesses for the plaintiff estimate the rent as follows:

Captain Frisbie, (p. 23,) from 1848 to 1850, $400 to $500 per month; from 1850 to 1851, $200 to $300 per month; after 1851, at $100 per month.

Brookman, (p. 30,) from 1846 to 1853, from $300 to $500 per month, and perhaps $600.

McDonald, (p. 33) in 1849, $500; in 1850, $400; in 1851, $150; in 1852 and after, $75.

W. M. Boggs, from $300 to $500 per month, while they were occupied by the troops.

Acting Quartermaster Allen, at $250 per month.

These variant estimates cannot be reconciled by averaging them or otherwise, and a safer guide may be found in the facts shown relative to the subject-matter and the opinion of the witnesses best qualified to judge of the case in its circumstances. It appears from Brookman's testimony (p. 30) that he rented two small board shanties in Sonoma, in 1849 and 1850, one with one room for $30, and the other for $50, and he says: "Captain Frisbie had an adobe, not quite so large as the barracks, he rented for six thousand dollars a year, *I think*." And it appears from the testimony of Colonel Hooker (p. 76) that the government rented another building of nearly the same extent as the barracks, for the use of General Smith and his staff, and that the rent was four hundred and fifty dollars per month; but he says this was a very comfortable house, with verandas on three sides on both stories, windows for ventilation and light, and three or four entrances to the house, and floors up stairs and down, &c., &c. "The barracks was a barn compared to this house," (p. 76.)

Quartermaster Allen hired this house, and, as he says, "*at the lowest rate*," (p. 45;) and when asked the proper rent for the barracks, he answers, (p. 44,) "I have named in the former examination two hundred and fifty dollars; I judge of this from the fact that I hired private buildings in Sonoma at the same time, the relative price, considering the value of the property, at a higher rate." And he says again, (p. 44,) "I knew the value of property in Sonoma at the time—the usual rate of rents; and in this connexion having, as I before stated, made a comparison of the relative value of property, I came to the conclusion that the charge made by General Vallejo for the barracks, on the supposition that he was the owner of them, was very reasonable, and below the current rate of the town." Quartermaster Allen was then "chief quartermaster for the Pacific division," (p. 44;) he was officially engaged in and acquainted with the subject-matter of quarters for the troops, and could estimate the value to the United States of these particular premises in all the circumstances of

the case; and he was an officer of the United States, and has continued to be.

And Governor Boggs, (p. 97,) when asked, on cross-examination, "In view, therefore, of the impossibility of procuring such accommodations at Sonoma, other than the barracks and its appurtenances, during the time in question, would you regard two hundred and fifty dollars per month for the entire premises occupied by the government for troops, storehouses, hospital, stables, yard room, &c., as an exorbitant rent?" answered as follows: "Answer. Under such a state of things I would not, but under ordinary circumstances I would." The witness had just before (p. 97) stated that he did not think that quarters for the troops, &c., other than the barracks, could have been procured at Sonoma.

But the evidence shows that rents were higher in Sonoma in 1849, 1850, and 1851, than before or after those years.

Upon all the evidence, it is considered that a reasonable rent to be paid by the United States is $250 per month from June, 1849, to July, 1851, and $200 per month for the other portions of their occupancy after May 30, 1848, thus:

From May 30, 1848, to November 16, 1848, 5½ months, at $200 per month	$1,100 00
From June, 1849, to July, 1851, 26 months, at $250 per month	6,500 00
From July, 1851, to August, 1853, 25 months, at $200 per month	5,000 00
	12,600 00

In all, twelve thousand six hundred dollars, for which a bill will be reported.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 205.

LYDIA R. SHREVE, AND WALKER R. CARTER, ADMINISTRATORS OF HENRY M. SHREVE.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled.

The Court of Claims respectfully presents the following documents as the report in the case of

LYDIA R. SHREVE, AND WALKER R. CARTER, ADMINISTRATORS OF HENRY M. SHREVE, *vs.* THE U. STATES.

1. The petition of the claimant.
2. Memorial to Congress of Henry M. Shreve, with accompanying documents; numbered from 1 to 58, referred to the Court of Claims by the House of Representatives, March 3, 1855.
3. Papers received from the War Department in answer to the order of the Court of November 25, 1856. Report from Colonel of topogrophical engineers, with accompanying papers, numbered from 1 to 23. from Chief Engineers, with accompanying papers, numbered from 1 to 7.
4. Papers received from War Department in answer to the order of the court of December 2, 1857, and numbered from 1 to 15.
5. Depositions and other documents, marked 1. C. to 10 C., with H. M. Shreve's original patent for his snag-boat, filed by claimant.
6. Letter from the Secretary of War to M. Blair, United States Solicitor, with documents therewith transmitted, and marked 1 B to 5 B.
7. Letter from Secretary of War to R. H. Gillet, with accompanying documents, marked 1 G. to 15 G.
8. Documents, marked A. No. 1 to A. No. 4, filed by United States Solicitor.
9. Report of Capt. J. C. Woodruff to the Secretary of War, in answer to the order of the court of January 18, 1859.

The foregoing documents, numbered from 2 to 9, are enclosed in a separate envelope, and transmitted to the House of Representatives.

10. Claimant's brief.

11. U. S. Solicitor's brief.
12. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

I.

IN THE COURT OF CLAIMS.

To the honorable the Judges of the Court of Claims:

The petition of Lydia R. Shreve and Walker R. Carter respectfully showeth: That the said Lydia is the widow and the said Walker R. is the executor of Henry M. Shreve, late of the city of St. Louis, in the State of Missouri.

That under the provisions of the act of Congress of the 24th of May, 1824, for the improvement of the Ohio, Mississippi, and Arkansas rivers, the said Henry M. Shreve was, on the second of January, 1827, appointed by the Secretary of War superintendent of such improvement, at a compensation of six dollars per day, and continued at that rate of compensation up to the 3d day of July, 1832, when a salary of $3,000 per annum was fixed by Congress for said office, which salary said Shreve continued to receive from that time up to the 11th day of September, 1841, when the superintendence of said improvement was entrusted to other hands.

That as early as the year 1821 said Shreve had turned his attention to the subject of sawing off snags and sawyers under water, and after various experiments, at last invented an improved machine for removing snags and sawyers from the beds of rivers, which consisted of a combination of several mechanical powers, and for which, in the year 1828, he was authorized by the Secretary of War to build the steam snag-boat Heliopolis, which was finished on the 22d day of July, 1829. With that boat the said Shreve broke off and raised snags, consisting of trees sixty feet long and three and a half feet in diameter, which had been implanted twenty feet in the bed of the river; and so well was the department satisfied with the result of the experiment, and the great service performed by the Heliopolis, that in 1831 he was instructed to build another boat, and in 1836 two additional ones.

Your petitioners would further represent that, under the aforesaid act of the 3d of July, 1832, it was only the duty of said Shreve, as such superintendent, to supervise the improvement of the Ohio, Mississippi, and Arkansas rivers; yet in February, 1838, he was instructed by the Secretary of War to commence the removal of the Red river raft, an accumulation of trees and logs embedded in the river to the extent of one hundred and sixty miles, which, after five years' labor, he accomplished, without interfering with or interrupting the

improvement of the Ohio, Mississippi, and Arkansas rivers; yet his salary was not increased, although his labors were greatly multiplied, nor was he allowed more than one clerk. And your petitioners represent that, by the removal of this raft alone, the river was opened for navigation for twelve hundred miles, and an immense quantity of land, worth millions of dollars to the government, was reclaimed.

And your petitioners further represent, that said Shreve applied to the proper office of the United States, on the 6th of July, 1836, for letters patent, which, on the 12th of September, 1838, were granted him; which letters patent are herewith exhibited, marked A. That from the nature of the invention and the purposes to which it could alone be applied, it was useful only to the government, upon which the duty of removing obstructions in the great navigable rivers devolved. That the whole term for which the exclusive right to use and vend said invention has expired, and neither said Shreve in his lifetime, nor your petitioners since his death, have received any benefit from said letters patent; but, on the contrary, that the United States, in violation of the Constitution of the United States, as well as of the laws passed to secure the rights of inventors, and against the protest of said Shreve, have used the aforesaid invention during the whole period for which said letters were granted, and thereby secured to themseves advantages which are almost incalculable in amount, and have received the whole benefits and advantages thereof, and for which the United States are bound in law to pay.

And your petitioners represent that the value of said invention is, in their estimation, two hundred thousand dollars, and that the benefits which have accrued to the United States by the use of said patent-right very far exceed that amount.

And your petitioners further represent, that the claim of said Shreve has been long before Congress; has been reported upon favorably by six different committees in the House of Representatives, and once in the Senate; that it was once laid upon the table in the House; that a resolution of the Legislature of Indiana, instructing their Senators and Representatives to vote for compensation to said Shreve and for the purchase of said patent-right, was communicated to the House of Representatives, and this is all the action of which your petitioners are aware; and they pray the judgment of your honorable court for such amount as they are in law entitled to.

WALKER R. CARTER,
Executor of H. M. Shreve.
LYDIA R. SHREVE.

A. H. LAWRENCE,
F. W. RISQUE,
Attorneys for Petitioners.

STATE OF MISSOURI, *County of St. Louis, ss:*

On this 13th day of June, 1855, personally appeared before me Walker R. Carter, and made oath that the statements in the foregoing petition are true, to the best of his knowledge and belief.

WALKER R. CARTER.

Sworn to and subscribed before me this 13th day of June, 1855.

In witness whereof I, William T. Ferguson, clerk of the probate court of the county of St. Louis, hereto set my hand and affix [L. S.] the seal of said court, at office in said county, the day and year above written.

WILLIAM T. FERGUSON, *Clerk.*

2.—No. 1.

MEMORIAL OF CAPTAIN HENRY M. SHREVE.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned most respectfully represents to your honorable body that, in 1828, the undersigned, after many years of intense study, labor, toil, and heavy expenditures in experiments, invented the snag-boat, a machine of gigantic power, intended for the purpose of removing snags, sawyers, planters, rocks, and other obstructions in the navigation of rivers. That in the summer of 1828, the government of the United States directed him to construct the snag-boat "Heliopolis," which whas completed and put in operation in August, 1829, and that boat has been in service ever since. In 1831 the government of the United States ordered the construction of the snag-boat "Archimedes," on the same plan and principles, and both of them have been examined by competent artisans, machinists, and navigators, who have united in pronouncing the snag-boat a splendid machine, and have been unable to suggest an improvement upon the original model. In 1836 the snag-boat "Eradicator" and the snag-boat "H. M. Shreve" were constructed by order of the government of the United States. The snag-boat is only adapted to the effectuation of such works as must necessarily be accomplished by the government. By *its* agency, improvements of *very extraordinary value* have been made in the Mississippi, Ohio, Cumberland, Arkansas, Missouri, and Red rivers, for a small sum, which otherwise would have required *endless millions* to have accomplished. In 1830, the snag-boat was examined by Major Delafield, who stated in his report to the chief engineer:

"The defficulties in the navigation of the Mississippi, consist in the numerous snags that are found in the track of steam-boats and flat-boats on the whole length of the river, and so numerous that no pilot can bear in mind their location. To remove them, the present superintendent has contrived and put in operation a steam-boat which answers the purpose admirably well."

In another part of the same report, Major Delafield, one of the most eminent engineers of the United States, speaks of the snag-boat as a "*splendid piece of machinery*," the power of which is such as to raise the *largest* and most *firmly planted snag* in the river," and he adds, that one of those raised while he was on board, "contained *one thousand*

and six hundred cubic feet of timber, after separating the root from it, and could not have weighed less than *sixty tons.*"

In his report of 1832, Major Delafield stated: "On the Mississippi river a continuation in the plans and operations of last season has been *productive of marked improvement, by lessening the risk of navigation*, by reducing the number of snags and sawyers." * * * * "The two steamers constructed expressly for the purpose of removing snags, &c., from the channel (a description of which was given in my report of 1830) during the season of low water, have been working one above the mouth of the Ohio and the other below."

These extracts demonstrate that the snag-boat was invented for the express purpose of improving the navigation of our great rivers; that it is a splendid piece of machinery—has been advantageously employed, and may be pronounced indispensably necessary to the future operations of the government.

Some idea of the power of the machinery connected with the boat, may be had from the fact, that it is capable of rasing more than *two hundred tons*, at the rate of four feet per minute. In demolishing about thirty islands in the Great Raft in Red river, it was frequently necessary to tear up trees by the roots that measured, some distance above the surface, two feet in diameter, the roots of which, in some instances, extended to the depth of sixteen or seventeen feet. In these operations chains are employed, constructed of bolt iron *two inches* in diameter, and of links made as short as possible, which were designed to be the weakest parts of the machine, and have frequently been broken without detriment to any other part. Neither of the snag-boats has ever yet come in contact with any snag, sawyer, or planter that could not be torn up with facility. It extracts by the roots, without difficulty, the largest trees found on the margin of our rivers; and in making *cut-offs*, a snag-boat with a crew of thirty-two men will perform as much work per day as can be done by *five hundred hands*, with the implements usually employed in making excavations. The *cut-off* made in the Mississippi in 1831, six miles above the mouth of Red river, which was effected by an excavation of four hundred and twenty feet in length, twenty-four feet in depth, and twenty-seven feet in breadth, was accomplished in *eight days* by the Heliopolis and a crew of thirty-two men. By that *cut-off* the *length* of the river was diminished *eighteen miles*; the water was lowered in the bend thirty-two inches, and about *two hundred thousand acres* of land of the richest and highest value lying on the bayou Atchafelia and Red river, were redeemed from inundation. In removing rafts, the machinery is of the utmost importance in breaking and tearing out the main logs connecting the masses together and with the bottom, and in subsequently parting and removing them in blocks of from one to fifty acres at a time, which are then sundered and scattered by other boats and lighter machinery. The snag-boat has been used with equal success in removing the *massy rocks* which impeded the navigation in the grand chain in the Ohio, a work which was accomplished for less than one-half of the first appropriation made to effect it.

These facts prove that the snag-boat is an invention of GREAT VALUE

to the nation; that it has ALREADY SAVED IMMENSE SUMS—accomplished work which COULD NOT POSSIBLY have been done without it, and must continue to be of the highest importance to the United States in prosecuting improvements in the navigation of the numerous rivers of the confederacy.

The Committees on Public Lands of the United States House of Representatives, on June 5, 1834, as vide document No. 509, and also on March 3, 1836, vide document No. 383, made reports on the memorial of the undersigned, in which they state as follows:

"That it appears from official reports and other information in possession of the committee, that the petitioner is the inventor of the snag steamboat; that it was contrived and constructed expressly for the purpose of removing snags and rocks from and improving the navigation of the Mississippi; that it has been tested by the experience of five years, and *minutely examined and approved of by some of the most experienced officers of the corps of engineers.* Capt. Delafield, of that department, describes it as a splendid piece of machinery, the power of which is such as to raise the largest and most firmly planted snags; 'as an invention that answers the purpose admirably well.' Capt. Delafield states that one snag raised by the Heliopolis while he was on board contained sixteen hundred cubic feet of timber, and could not have weighed less than sixty tons. The first snag-boat was constructed in 1829, the second in 1831, and the success with which they have been employed in improving the navigation of the Mississippi, Ohio, Arkansas, and Red rivers, is so fully tested by reports made to the chief engineer, that the *committee are constrained to view the invention as one of great importance to the government. It is a labor-saving agent of immense power*, by the aid of which the petitioner has recently demonstrated by actual experiment that the great Red river raft may be speedily removed and demolished. When this great work shall be accomplished, the navigation will be as good through what is termed the line of the raft as it ever has been below it, and the river may be ascended by steamboats of the first class upwards of eleven hundred miles. In a *military point of view*, the improvement of the navigation of Red river may be pronounced a work of great importance. That stream constitutes the only water communication with a considerable portion of the northwestern part of the State of Louisiana; the Arkansas, the northeastern frontier of Mexico, and the southwestern territory of Missouri, to which the government is now removing the aborigines of the country. Fort Towson is on Red river, distant about eleven hundred miles from its mouth. By proper improvement this stream may be made navigable for small steamers several hundred miles above Fort Towson, and may be ascended in large keel-boats and barges nearly to the Rocky mountains. In the region through which it flows military posts will have to be maintained for ages to keep the Indian tribes in check, and to insure harmony among them as well as to preserve a good understanding with Mexico. In the transportation of supplies and munitions of war to Fort Towson, the government has encountered *difficulties almost insurmountable*, and at one time the troops at the post were left destitute of their regular provisions and clothing during a whole

season, *owing to the impossibility of passing the great raft.* The present price of freight from Natchitoches to Fort Towson is three cents per pound. When the raft shall be removed, it is believed the price of freight from New Orleans to Fort Towson will not exceed seventy-five cents per hundred pounds. The committee are persuaded these facts will not only convince the House that the destruction of the *raft is highly desirable in a military point of view*, but that it will *add some eight or ten millions* to the value of *the public domain* on the waters of Red River, and eventually be *productive of incalculable agricultural and commercial advantages.*

"This is an imperfect view of the general advantage which must follow the removal of the Great raft, a work which the *committee believe* COULD NOT HAVE BEEN COMMENCED WITH A PROSPECT OF SUCCESS *without the aid of the snag-boat*, and the energy and skill of the inventor. Other improvements have been made and are in progress, in which the snag-boat has proved itself a valuable, and the *committee may say, an indispensable* agent. Although the commerce of the Mississippi and Ohio rivers has *increased about one hundred per cent.* since 1829, it is supposed the losses on those rivers have not exceeded, in the *last five years, one third* of the aggregate amount of those sustained in the five years immediately preceding. *Similar results* must follow the improvement of the Red river, the Missouri, Upper Mississippi, Arkansas, and all their numerous tributaries navigable for steamboats; and in the course of these operations *many millions of acres of valuable lands will be reclaimed*, thereby *contributing largely* to the national treasury, as well as to the *health* and *convenience* of the adjacent country.

"The Missouri river is now navigated by steamboats from its mouth to the Yellowstone, a distance of nineteen hundred miles, and is navigable to the Great Falls, six hundred miles above the Yellowstone. This noble stream flows through one of the most salubrious, and for seven or eight hundred miles, fertile regions on earth. The Yellowstone is one of its principal tributaries, and, with some inconsiderable improvement, would be navigable for steamboats *five or six hundred miles*, almost to the eastern base of the Rocky mountains. The Missouri also receives the Osage, Gasconade, Grand river, Kansas, Platte, and many other important navigable streams, that are destined ere long *to add an incalculable amount* of the products of the soil, and of the mines, of the vast region through which they meander, to the trade and commerce of the country.

"The principal obstructions in the navigation of those rivers are such as may be easily removed by the agency *of the steam snag-boat*, and at a moderate expense.

"With this view of the general advantages derived, and to be derived, by the invention and use of the snag-boat, the committee respectfully recommend to the House the passage of an act granting to the petitioner the right of pre-emption to eighteen sections of the public lands lying on the line of the aforesaid raft on Red river, and for that purpose report the accompanying bill."

The undersigned adds the following official reports of United States officers demonstrating the immense value of the invention of the snag-

boat. The first is an extract from the report of George Dutton, lieutenant of engineers, to the United States Engineer department, relative to the progress and state of the operations for the improvement of the Ohio river—(from Executive documents, No. 2, of session of 1835–'6, page 177,) dated Pittsburg, October 25, 1835, as follows: "The snag machinery *invented and used with so much effect* by Henry M. Shreve, Esq., in the removal of obstructions to the navigation of the Mississippi and Red rivers, and which *combines in its construction, much simplicity of arrangement with great power of action*, was, after a short inspection, *unhesitatingly adopted* for the removal of similar obstructions in the Ohio river above the falls; it was therefore determined to proceed, without delay, to the construction of four of these machines, for application on the river."

Another official report from a United States officer demonstrating the immense value of the *invention* of the snag-boat is as follows: Extract from the inspection report of A. H. Bowman, lieutenant of engineers, to the United States Engineer department relative to the progress of operations in removing obstructions in the Mississippi river—(from Executive documents, No. 2., of session of 1835–'36, page 172—dated Memphis, January 31, 1835:

"The Archimedes removed, during the season, from the bed of the Mississippi, three hundred and seventeen snags, and cut from the banks 1,116 trees. The same boat on her way up the Red river, removed 189 snags, and cut 12 trees. She commenced operations at Tiger island, one of the most dangerous points on the river, and removed every obstacle at that place. After commencing on the raft it was impossible to keep a journal of the logs and snags removed. The Heliopolis entered the Mississippi and commenced work, November 19th. This boat had undergone thorough repairs during the last summer, and is now in excellent order, and under the able management of her present captain is producing the most satisfactory results. I visited this boat on her way down the river to witness her performance. The department is already in possession of *the most unquestionable proofs* of the *efficiency of this machine* drawn from its hitherto *successful operations;* but I cannot here omit an opportunity of rendering *the merited tribute of praise to its* EXCELLENCE, and to the ingenuity of its inventor. No machine *can surpass it* in its *adaptation to the work* in the execution of which it is now engaged. The machine is *simple in its construcion* and *easy in its application*, while in power it has been found adequate to *overcome promptly every obstacle* it has yet encountered. Through the agency of *this machine*, the *largest snags and logs* are *extracted with ease, many of which without its intervention could* NEVER HAVE BEEN REMOVED. THE VALUE OF SUCH AN AUXILIARY, in the annual improvement of the Mississippi, is *commensurate with the importance of the work.*"

The following extract from Executive documents, No. 74, of 21st Congress, 2d session, 1830–'31, shows the *magnificent effects to be derived* from the improvement of the *Ohio* river by the snag-boat:

"By the completion of the proposed improvements, steamboats of a medium size will be enabled to run *five months* in each year *longer* than they now do, viz., July, August, September, October, and No-

vember. In those five months there are about 500 flat bottom and keel boats passed down the river, carrying an average of 60 tons of freight, amounting together to 30,000 tons, at $15 per ton, the average price paid for freight carried by them at low water—in all $450,000; in the same time, at least 10,000 tons of freight are transported up the river for New Orleans, St. Louis, &c., at the rate of $20 a ton freight, making $200,000; to which add about 8,000 passengers that pass up and down the river, at an average of $20 each—$160,000 —producing an aggregate of $810,000. If the navigation can be improved as to admit of steamboats, drawing four feet of water, to run, transportation can and will be afforded at the same rate of freight and passage that is now paid when the river is high, which does not amount to more than *one-half* the amount paid in low water. This will *produce a saving* to the commercial and travelling interests of the country of $465,000. Add to this amount losses sustained by the boats stove and lost on the obstructions in the bed of the river, and you find a clear saving of at least *half a million of dollars*. Then carry the same calculation from Louisville to Pittsburg, and we find that the advantages to be derived from the contemplated improvement amount to a sum not less than $1,250,000 IN A SINGLE YEAR."

Equally splendid results have followed the improvement by the snag-boat of the *Mississippi*, the *Arkansas*, the *Red*, the *Cumberland*, and the *Missouri* rivers. The following extract, from an official report, shows the resplendent results from the removal of the Great raft in Red river by the snag-boat:

Extract from the report of A. H. Bowman, lieutenant of engineers to the United States Engineer department, from Executive documents of session 1837, 1838, No. 3, page 427, relating to an inspection by him of the operations for the removal of the Great raft in Red river, dated Memphis, April 16, 1837:

"It is difficult to form a just conception *of the magnitude of this work* or fully to appreciate the *important results* that are to flow from it.

"The river is navigable more than a thousand miles above the raft, and through a region not surpassed in fertility by any on the continent.

"This extensive country is comparatively unsettled; its vast resources and wealth remain to be developed. Although enterprise has pushed forward, notwithstanding the apparently insuperable barrier opposed by the raft, yet hundreds are looking to its removal as the signal for entering the country. The success of the undertaking once involved in doubt, and the permanent advantages that must result from it, are no longer matters of uncertainty. The indefatigable industry, zeal, and perseverance of the superintendent [Captain Henry M. Shreve] has triumphed over difficulties well calculated to intimidate him. Bayous have been closed with masses of timber; *islands of huge logs, for centuries imbedded together, and covered with living trees, have been removed;* the timber composing them has been dragged on shore, or, being cut up and cast upon the current, has passed away. Indeed, every mile in ascending bears evidence of the immense labor bestowed upon its improvement."

The following extract from an official report made by the undersigned to the United States Engineer department, contained in execu-

tive document No. 2, of session of 1838–'39, page 310, dated Louisville, June 4, 1838, exhibits the extraordinarily valuable results produced by the snag-boat in removing the Great raft, extending the navigation thousands of miles thereby:

"I consider the navigation as safe through that part of the river where the raft was formerly located as at any other part of it, from forty-five miles above its mouth to the head of steamboat navigation, a distance estimated at 1,150 miles. The former location of the raft occupied 165 miles of that distance. Its removal has extended the navigation by steamboats about 750 miles on the Red river proper. Its tributaries, from the best information I am in possession of, will afford about 600 miles, with but partial improvement in their channels, and may be extended by improvements on the main river and its tributaries some 900 miles further, extending the whole line of navigation by the improvement [removing the raft] 2,250 miles, passing through as fertile a soil as any on this continent, with a less proportion of land which is unfit for cultivation than any tract of the same extent in our country. * * * The lands on the river bottom, from the foot of the raft to one hundred miles above its head, have been nearly all redeemed from inundation by the removal of timber from its bed; all of which is now settling with unprecedented rapidity. * * * The advantages to be derived from the removal of the Great raft cannot now be calculated. The government land on the river has been enhanced in value to an immense amount, not less, I should judge, than fifteen millions of dollars. The settlers will reap inestimable advantages from the same work."

By the removal of the Great raft half a million of acres, on the line of the raft that were inundated have been drained and redeemed, an immensely valuable steamboat navigation of 2,250 miles has been opened through a fertile country, and the speedy sale of at least 200 millions of acres of the public land will be insured.

The undersigned states that the two former reports and bills of the Committees on Public Lands, on his memorial, contemplated allowing him "a pre-emption right to eighteen sections of the public lands lying on the line of the raft on Red river;" and had those bills, or either of them, passed into a law *at the time*, the undersigned would have been remunerated for his very valuable invention, as those lands would have then been worth to him *at least two hundred thousand dollars;* but, inasmuch as those lands have been sold and disposed of by the government, and the undersigned did not obtain them, as it was then contemplated to let him have them, and, inasmuch as the valuable lands on the line of the raft are not now to be obtained in the place desired by your memorialist, the undersigned asks, in lieu of the same, for the passage of a bill for the purchase, from the undersigned, of his property, guarantied to him by the Constitution and laws of the United States, in his patent for the "exclusive right and liberty of making, constructing, using, and vending to others to be used," the snag-boat.

The undersigned further states, that when it is considered that he was the first one to suggest to the government the plan for the removal of the Great raft, as vide his letter to the Engineer department of 29th September, 1832, and that his plan was adopted by the govern-

ment, and accomplished by the undersigned at great hazard of life, and at such very extraordinary advantage to the nation, and that the accomplishment of that work, and the removal of the obstructions of the Mississippi, Ohio, Cumberland, Arkansas, Missouri and Red rivers, was owing alone to the invention of the snag-boat by the undersigned; and when it is considered that notwithstanding the great and immensely important improvements already made on the above-named rivers, the work of improvement is not yet done, and that the navigation of the upper Mississippi, the Missouri, the Osage, the Gasconade, the Grand, the Kansas, the Platte, the St. Francis, (the removal of the raft in the last of which will DRAIN AND REDEEM A MILLION OF ACRES OF PUBLIC LAND,) the Yellow Stone, and other rivers, will require the use of the snag-boat, without which they cannot be improved, the undersigned cannot doubt that the United States will purchase his invention; and as it has produced transcendental benefits, and is destined to produce in future equal benefits, as it has and will produce to the United States, 1st, in the vast saving and economy of removing the obstructions of rivers, (many of which obstructions could not possibly be removed without it; 2, in saving vast sums to the United States in the transportation of *troops*, *supplies*, and *munitions of war*, and the *transportation of the mail*; 3, in the saving of the destruction of a large quantity of property in steamboats and their cargoes; 4, in the drainage and redemption of millions of acres of the most valuable land; 5, and has caused and will cause vast appreciation of immense quantities of other public lands to the amount of very many millions of dollars—it therefore has, and will have, from all these causes, produced to the United States at the least *one hundred millions of dollars*, therefore the lowest possible amount of the real intrinsic value of the invention, or patent, cannot be one mill less than one hundred thousand dollars, being the *one thousandth* part of the *actual saving*, from the five effects above described, to the United States. And as the Constitution and laws, under all their sacred and solemn forms, have secured to the undersigned the exclusive use of it, and it being worth *in reality double that sum*, his sacred duty to his family makes it imperative on him that he cannot and will not part with his patent for one mill less than one hundred thousand dollars; but as the Constitution and laws have made it subject to his will, he will not permit the farther use of it by the United States without remuneration—but is bound by these considerations of solemn duty to his family, as the United States has not purchased it, to sell and dispose of the patent to a company of private individuals who will give him that sum—and by which the United States will have to give a much larger sum, at least TWO hundred thousand dollars; but he is willing to give the United States an opportunity to purchase it, and if they neglect to purchase it he must dispose of it to others. The usage in the valuation of other patents has been a much higher sum, four times more for far less valuable patents. A company in the city of New York has purchased the patent of Mr. Cochran for his many-chambered rifle for the sum of $400,000. An association of private individuals in the city of New York has offered, in 1836, *five hunared thousand dollars* for an *improvement* in steam navigation, by which a vessel is to be supplied with suf-

ficient fuel to cross the ocean, for the patent. The Congress of the United States, on the 4th of July, 1836, passed a law appropriating to William H. Bell, an officer of ordnance, for *mere improvement* in the apparatus for aiding in aiming cannon, *twenty thousand dollars.* Committees of Congress have repeatedly reported to allow John H. Hall for *improvements* in fire-arms *twenty thusand dollars*, and committees of Congress have reported to allow Boyd Reilly ten thousand dollars for an improvement in the vapor bath—neither of which three last mentioned cause the *one thousandth part* of the saving and advantage to the United States which the invention of the undersigned does. The State of Georgia, for the use, for a *single State*, appropriated *fifty thousand dollars* for the purchase of the patent for the cotton gin of Eli Whitney, and the State of Pennsylvania, for the use of a *single State*, gave thirty thousand dollars for the patent of Burr's improvement in bridges. The United States, by special act of Congress, have granted to John Howard Kyan a foreigner and subject of Great Britain, resident in England, a patent for a mere improvement in the use of a solution of corrosive sublimate to preserve timber—and thereby he obtains *fifty cents* patent premium to *every pound* of corrosive sublimate used, by which patent he is reaping a much larger sum from the United States, (as it is used in the construction of all the forts and public works in large quantities and will be during the term of the patent,) than is here demanded for the patent of the undersigned; and will the United States, after passing a special law of Congress, granting to a FOREIGNER a patent by which he is drawing from them through their public works double the amount which the undersigned requires, and for a very far less valuable patent than that of the undersigned, refuse to one of their *own citizens* from whose patent they have already derived *incalculable* and *immeasurable advantages*, and who has for years risked his life in a dangerous and gigantic service for them, refuse to him the commonest and barest justice. The United States have often paid large sums of money for the purchase of additional land for the forts and for other objects for *mere convenience*, but by the purchase of this patent they gain more intrinsic value than by *any other* outlay of money that could *possibly* be made, and as they have made this valuable patent property by their own act by the Constitution and laws of the land, and used it, deriving extremely valuable benefits from it, they cannot justly refuse what its value is according to usage. To use the valuable patent of the undersigned, his private property which the Constitution and the laws guarantee to him the full benefit of, and then refuse its real value would be to the full as great an outrage upon him as to take the coat from his back (which is no more his property than this patent is his property,) use it for the public service and then refuse him remuneration. The Constitution of the United States, article sixth, requires as follows: "Nor shall private property be taken for public use without just compensation. The British government, after granting Watt a patent for improving the steam engine of twenty-five years' duration, extended it six years longer making thirty-one years in all, and he obtained one-half the saving in fuel effected by his improvement; but one hundred thousand dollars would be but the

one thousandth part of the actual saving effected by the snag-boat, and accomplished work which was totally impossible for any other means to have accomplished, and opened an immense navigation. The United States, by passing laws requiring treble damages for using a patent belonging to another person without remuneration, have, by such exemplary damages, shown their abhorrence of it. The laws of the United States will not allow the infringement or use of a patent to the amount of one dollar; and can this very sovereignty who makes these laws and thus decides what is justice, do less than make the full remuneration which it requires of others? The maintenance of the national honor and integrity equally and fully requires that it act justly as well in this case as in any intercouse with foreign nations. As the Constitution requires that, "nor shall private property be taken for public use without just compensation," and as the United States have used the property of the undersigned, this invention, vested in him by patent, therefore any legislative motion or act which should refuse to indemnify him for his property in this patent would be grossly unconstitutional.

A machine that can effect in a day what five hundred men could not do, and with such amazing facility—there is not a man of judgment and knowledge in the valuation of other patents that would honestly say that the patent for the whole United States for the entire term of the patent was worth a thousandth part of a mill less than one hundred thousand dollars. It has by removing obstructions which no other means could remove, drained and recovered overflowed land to the amount of twelve millions of dollars, and is destined to drain and recover an equal amount more, at the same time increasing the health there by of vast sections of country, added vastly to the value of other public land to the amount of twenty-five millions of dollars, and destined to increase the value of other public lands an equal amount, and in the removal of the Red river raft and in the very extensive improvements made by it in the Mississppi, the Ohio, the Cumberland, the Arkansas, the Missouri, and the Red river—other than raft, has caused a saving to the United States of at least twenty millions of dollars by the economy of the operatians of the machine, and is destined to save an equal amount more; it has opened military intercourse of immense value, saving each year on Red river alone in transportation of supplies for troops, as vide report Secretary of War, this session, Doc., 2 page 24, about one hundred thousand dollars, and thus afforded means for the instantaneous concentration of troops and munitions of war, in case of war upon our western borders, where are twenty thousand Indian warriors; or in case of attack upon our southern coast or boundary, by the facilities of intercourse vastly increased the sale of the public lands, and by increased ties of intercourse bound together this Union.

The whole length of time which the several snag-boats, viz: the "Heliopolis," the "Archimedes," the "Eradicator," and "H. M. Shreve," have worked produces an aggregate of twenty-eight years. Put the patent right of using that machine at the moderate rate of two thousand five hundred a year for each boat, and the amount is seventy thousand dollars; and for the remaining term of the patent, for four

boats only at twenty-five hundred dollars each per year, would amount to one hundred and twenty thousand dollars, which added to the seventy thousand dollars would make one hundred and ninety thousand dollars; and the United States will use a greater number than four, in the improvement of the Missouri, Upper Mississippi, Yellow Stone, Osage, Gasconade, Grand, Kansas, Platte, St. Francis, and many others. The above amount of one hundred and ninety thousand dollars, the undersigned might therefore most justly claim, but he only lays his claim to the amount of one hundred thousand dollars as his unquestionable right, about one-half of what every consideration of the barest justice fully entitle him to, which he hopes the United States will not withhold from him, when they have already derived over fifty millions of dollars advantage, and are destined to derive at least fifty millions more.

After thus having made his demand of the United States for remuneration for their using his property, secured to him by the Constitution and by the laws of the United States, for the use of a machine of illimitable value, and from which the United States have derived incalculable benefits, his sacred duty to his family makes it incumbent on him to say, that unless his patent is purchased, as the Constitution and laws have placed the absolute control of his patent in him, as much as they have placed in him the control of the coat on his back, and the United States might equally as well take the coat from his back and use it without remuneration, as to take any other of his property and use it without remuneration—he must and will cease to allow the further use of his patent by the United States. The snag-boats "Heliopolis," "Archimedes," "Eradicator," and "H. M. Shreve," must cease operations in removing obscructions in the Mississippi, the Ohio, the Arkansas, the Missouri, and the Red rivers, and by which cessation of operations, more property will be sacrificed by the sale of present materials and stoppage of the works than double the amount demanded of the United States for his patent. As to any remuneration which he derives from the United States from being in its service, his talents, as a civil engineer, he knows will produce him a greater income in other service than that of the United States.

The undersigned further states, that Congress passed a law on July 3, 1832, allowing him $3,000 a year to superintend the improvement of the navigation of the Ohio, Missisippi, and Arkansas rivers, and that subsequently he was ordered to remove the Great raft in Red river, as vide document, No. 98, of session of 1833–'34, herewith accompanying, page 3, and was also ordered to remove the obstructions in the Missouri river, and ordered to remove the obstructions in the Cumberland river, which was done by him, and no additional allowance received by him, notwithstanding the distinct responsibilities imposed upon him, as well as the necessary additional expenses incurred by the undersigned, amounting to at least eight hundred dollars per annum more; so very remote were these several improvements situated from each other, these additional expenses reduced his remuneration from $3,000 down to $2,200, when, at the same time, at least three times the labor was placed upon him that was intended by Congress in the passage of the act of July 3, 1832. The engineer of the

Charleston and Cincinnatti railroad, gets $11,000 per annum as a compensation, and Benjamin Wright, civil engineer, gets $5,000 a year from two or three improvement companies each, making about $15,000 per annum; these are works of common and well known principles which any engineer could execute, whereas the Red river raft was an entirely novel and extremely arduous work.

Lieutent Bowman states in a document herewith accompanying: "It is difficult to form a just conception of the magnitude of the work," &c. No civil engineer would have undertaken so extremely arduous and difficult a work as the removal of the Great raft, for a compensation less than $6,000 per annum. But not only was the Great raft placed upon him, additional to the duties that Congress awarded him $3,000 per annum for; but also the removal of the obstructious in the Missouri river, and the removal of the obstructions in the Cumberland river. Therefore, as *three times* the work has been placed on him that was intended by Congress in the act of July 3, 1832, wherein a certain specified compensation was assigned him for certain *specified* services, he is entitled, at the lowest sum, to $3,000 per annum additional. This sum of $3,000 per annum for eight years, from the time of commencing the removal of the Great raft, makes $24,000.

Although, from the immense advantages and unbounded profit which the use of this invention gives to the United States, it is worth two hundred thousand dollars, and it is worth that in accordance with universal usage and custom in the valuation of far less valuable patents which are valued at that. And although he has a just demand on the United States for doing, as ordered, treble the duty for which the United States, by express law, assigned him for a specified service a specified compensation, and thus is entitled to the amount of twenty-four thousand dollars; yet, for the entire amount of his demands, which would justly amount, as above, to two hundred and twenty-four thousand dollars, he will for the sum of one hundred thousand dollars make a full and perfect deed for the whole United States for the whole of his valuable patent to the United States, and give a general release of all demands of every name and nature whatever. But if the United States will not purchase this exceedingly profitable invention to them, he will be under the necessity of ceasing to allow them to use his property any longer. Believing that they will remunerate for past use and purchase it, the undersigned will ever acknowledge the justice, the honor, and the integrity of the United States of America.

HENRY M. SHREVE.

No. 2.

ENGINEER DEPARTMENT,
Washington, May 27, 1836.

SIR: Your letter of the 30th ultimo reporting the progress of your operations on the Red river during the month of April, and the present state of the raft, has been this day received. It is regretted that the sickly season will oblige you to suspend operations before the

completion of its removal, as that event had been anticipated the present year; yet it is not supposed that any blame can attach to you on that account, as it appears to have arisen from causes beyond your control. Congress has not yet passed the appropriation granting the amount asked for the service of this season, nor is it now seen that it can possibly meet you on your arrival at Louisville. You must, therefore, make such arrangements for the discharge of your men, &c., as justice to these individuals and the public interest will authorize.

The department has taken all proper measures to bring the early consideration of this subject to the notice of Congress.

I have the honor to be, sir, your obedient servant,

C. GRATIOT,
Colonel Top. Engineers.

Capt. H. M. SHREVE,
On Engineer service, Louisville, Ky.

No. 3.

ENGINEER DEPARTMENT,
Washington, August 22, 1837.

SIR: Your letter of the 15th instant, marked "private," expressive of your anxiety relative to an early resumption of the operations for completing the removal of the Red river raft, and asking my advice on the subject of a loan of $30,000, which you think the planters above the raft might be induced to make for the purpose, reimbursable out of the appropriation to be made at the next regular session of Congress—this in case no appropriation is made during the called session now at hand. In reply, I have the honor to state that I have conversed with the Secretary of War on the subject. He concurs fully with you as to the great benefits the continuous navigation, by the removal of the raft, will afford, not only to the planters on the upper Red river, but to the public by the increased facilities it will offer for supplying the military wants of the country on its borders, independent of the great economy consequent on the execution of the work during the approaching fall as compared with its postponement to another year, which you estimate in your official letter of the 2d instant at $20,000. Lieutenant Bowman, in his inspection report of the raft of the 13th of July last, also adverts to the saving an early prosecution of the work would cause. For these reasons the Secretary does not forbid the loan, but rather advises it, provided the individuals who make it assume on themselves the entire responsibility of being reimbursed by Congress, the department engaging itself merely to ask for the amount estimated by you and Lieutenant Bowman as necessary for the entire completion of the work, viz: $50,000.

Should you succeed in making the loan on the conditions above stated, you are then authorized to employ on the work the steamers Eradicator, Pearl, and Laurel, together with the boats and machinery on hand belonging to the service of that river. Captain McKnight

and Lieutenant Lee will be instructed to loan the steamers under their charge for the purpose, so soon as the season will not admit of their being worked to advantage on the operations they belong to.

Very respectfully, sir, your obedient servant,

C. GRATIOT,
Colonel Top. Engineers.

Capt. H. M. SHREVE,
Louisville, Kentucky.

No. 4.

LOUISVILLE, *July* 7, 1824.

SIR: Having received a circular from your department on the subject of the improvement of the navigation of the Mississippi by removing all trees which may be fixed in the bed of the river, I hasten to answer your inquiries with pleasure, it being a subject which has occupied my thoughts for some time, having been engaged in navigating that river for the last seventeen years in barges and steamboats.

I am of opinion that the river may be entirely freed of the above obstructions, and will therefore offer you the following suggestions concerning it.

To drag all the trees from their bed would not be practicable, in my opinion; a small proportion of them might be removed in that way, but the most dangerous are so firmly planted in the sand and mud as to render it impossible to remove them without breaking them. I therefore think this plan would not be advisable.

The most proper plan I conceive to effect the object, would be to saw them off six or eight feet below the surface of the water at its lowest stage; the tops would then drift and not lodge again in situations to make them dangerous.

A boat drawing more than six feet of water cannot pass the bars in the river at its lowest stage, and therefore could not strike the stumps six feet under the water. I am also of the opinion that this would be the cheapest and best mode that could be adopted to clear the river of these impediments.

About three years ago I invented a machine for the purpose of sawing off snags, &c., under water, a model of which I will submit to the inspection of your department, if desired; and if adopted and used under the direction of a man adequate to the task, I have no doubt would succeed. The expense of the machine would not exceed eight thousand dollars. To pass rafts of timber down the river would be of no consequence, and the expense very great, besides they could not be managed to pass over the snags that are the most dangerous, such as stand on the bars and under the points of land where the rafts could not go; and if floated over them, many of them bend and rise again after the rafts had passed. The only proper season to engage in removing the snags effectually would be from about the 15th of

August to the 15th of November, when the water is at its lowest stage.

To make any estimate as to the exact amount of the expense attending the removal of the snags, &c., is impossible. I should suppose that it might be done for $50,000 from New Orleans to the mouth of the Ohio river. From observations I should be of opinion that there are at least thirty thousand snags in the bed of the river for that distance; this would be about twenty snags to the mile; one-third of the number stand on bars that are dry when the river is low, and might be cut off close to the sand by axemen, and the remainder sawed off by a machine situated on a boat of a certain construction for that purpose, to be propelled by a steam-engine, the same engine driving the saw fixed so as to cut them off six feet under water, if in water of that depth or deeper; if in shallow water, the saw will take them off within one inch of the sand. If your department thinks my machine of any consequence, I will have a model made and exhibited for their inspection. I have seen an advertisement stating that your department would receive proposals, until the 1st of September, for the work, to be let out in sections of fifty miles. This plan, I think, will not answer, as no man can make the necessary preparations for any sum that the government would be justifiable in giving for that extent of the river. The best mode, in my opinion, would be to let it out to one man or one company, who would undertake the whole, build the boats, prepare the necessary machinery, &c., for the purpose.

You will no doubt have a great variety of plans and opinions laid before you on this subject, and a great many applications for the contract, and but few capable of carrying into effect the intention of Congress. I shall not pretend to apply directly for the contract myself, unless the arrangement is changed so as to let the whole of the work to one concern; in that case I could form a company of the most competent men in the country to undertake it at a fair price.

I will, however, furnish you with a model of the machine which I have invented, if you deem it proper to inform me of your wish to examine it.

Very respectfully, your obedient servant,

HENRY M. SHREVE,
Master of Steamboat Washington.

To the SECRETARY OF WAR.

No. 5.

ENGINEER DEPARTMENT,
Washington, February 17, 1839.

SIR: I have the honor to hand the following reply to a letter (referred to this office) from the Hon. J. Fletcher, on the subject of a memorial of Mr. H. M. Shreve to Congress to purchase the right to use his invention of the snag-boat. Connected with this subject there are some considerations which I think it my duty to present, although

they may not be strictly within the scope of Mr. Fletcher's interrogatories.

Mr. Shreve first entered into correspondence with this department on the subject of removing snags, sawyers, &c., from the Mississippi river, in the year 1824, he then having in view certain machinery for that object, but whether it was the same as that now used, or similar to it, does not appear. In 1827, he was appointed to take charge of the works of improvement in the Ohio and Mississippi rivers, and has ever since continued in the same charge; and the boats, to the invention of which he lays claim, were built under his direction for the government, were applied with perfect success to the improvement of the rivers, and have been the sole means whereby the improvement has been achieved.

The very great value of the improvement wrought by these boats since 1827, is assented to by all who are acquainted with the western rivers, and has been repeatedly stated, in emphatic terms, by this department; and the continued use of boats of this description is deemed to be very important to the further prosecution of the work.

These points now present themselves—

1. Are the applications of machinery to the purpose of removing snags, &c., made by Mr. Shreve in his snag-boats, original inventions?

The snag-beam, which he considers a very important part, is probably entirely new; but as to the remainder, the question to be decided is one that must frequently arise under the patent law. The power is not new; the wheel and axle through which the power acts on the object are not new combinations; nor, it is thought, are the auxiliaries new, either in their nature or combination. Still, though the parts are severally old, such a general combination had not been made before, probably; and such an application of the combination, certainly, had not been made before.

2. Mr. Shreve is and has been in the receipt of a liberal salary from the government as superintendent of the works of improvement in question. Do his obligations under this salary require him to give his inventive faculties to the use of the government?

Circumstances will sometimes qualify or oppose the affirmative reply that might be given to this question; at least, such an opinion has been expressed more than once. The Committee of Public Lands, in 1834, recommended, on a petition of Mr. Shreve for compensation for this invention, that Congress should grant him the pre-emption right to eighteen sections of public land. Another committee, in 1836, made the same recommendation; and in the same year, Congress granted to an officer of ordnance $20,000 for certain supposed improvements made by him in gun carriages, while he, an officer of ordnance, was in the exercise of his appropriate functions.

If it be decided that the application of machinery, in this case, is not of the nature of a new invention; or that, whether it be or not, Mr. Shreve was bound, by the nature of his employment, to apply all his faculties to the execution of the trust he had accepted; then all claim for further compensation must be quieted.

But if, on the other hand, Congress shall think that the invention

was new, and that Mr. Shreve did not impair his right to extra compensation therefor in consequence of bringing the invention to its present state of perfection while under government pay and with government means, there then can be no doubt that he is entitled to a high reward for the great benefits already derived from the invention.

It is impossible, however, from the nature of the case, for this department to say what that reward should be. This, as well as the price that should be paid for the right to use the invention in future, must be left to the sense of justice and liberality of Congress.

The time consumed in advising with an officer at a distance, who has had personal experience in the use of the invention, has somewhat delayed this reply.

I have the honor to be, very respectfully, your most obedient servant,

JOSEPH J. TOTTEN,
Colonel and Chief Engineer.

Hon. J. R. POINSETT,
Secretary of War.

No. 6.

PATENT OFFICE, *January* 13, 1841.

SIR: In answer to yours of the 12th instant I have the honor to state that Captain Henry M. Shreve made application for a patent for his snag-boat on the 6th of July, 1836, which, after a full and careful examination, was found to be sufficiently new, useful, and important; and a patent was therefore granted, bearing date September 12, 1838.

Should you deem it desirable, a copy of the specification and drawings will be furnished. There is a very fine model of Mr. Shreve's snag-boat in this office, to which you may refer.

I have the honor to remain yours, very respectfully,

H. L. ELLSWORTH.

Hon. EDWARD CROSS,
Ch'n of Select Com. on Capt. H. M. Shreve's Memorial.

No. 7.

Extract from the memorial of twelve captains of steamboats and many other citizens, owners of steamboats of Louisville, Kentucky, praying for an appropriation for removal of obstructions in the Ohio and Mississippi rivers, presented to the House of Representatives, United States, on March 29, 1830, by the Hon. Mr. Wickliffe, of Kentucky.

"All this valuable merchandise and produce, together with thousands of lives have been heretofore exposed to a navigation rendered highly dangerous by snags and other obstructions. * * * But by the enterprise and untiring exertions of Henry M. Shreve,

he has, as we believe, at last discovered the much-desired plan by which the navigation of those rivers can be rendered comparatively, if not entirely safe. That plan is to be no longer regarded as a wild projection, or as an experiment. It has already rendered safe and easy some of the very worst channels of the Mississippi. Plum point and islands No. 62 and 63, which have heretofore been considered among the most dangerous passes of that river, present now only smooth sheets of water, which may be traversed with perfect safety. This plan consists exclusively in the use of a steamboat, *the like of which was never before conceived*, by the instrumentality of which your agent now ploughs up from their beds and dislodges those snags or planters, which have been so long the terror of all boatmen."

No. 8.

Extract from the inspection report of A. H Bowman, lieutenant of engineers, to the United States Engineer department, relative to the progress of operations in removing obstructions in the Mississippi river, from document No. 2 of Executive documents, of session of 1835 and 1836, page 172, dated Memphis, January 31, 1835.

"The Archimedes removed during the season, from the bed of the Mississippi, three hundred and seventeen snags, and cut from the banks 1,116 trees. The same boat, on her way up the Red river, removed one hundred and eighty-nine snags and cut twelve trees. She commenced operations at Tiger island, one of the most dangerous points on the river, and removed every obstacle at that place. After commencing on the raft, it was impossible to keep a journal of the logs and snags removed. The Heliopolis entered the Mississippi and commenced work, November 19. This boat has undergone thorough repairs during the last summer, and is now in excellent order, and under the able management of her present captain is producing the most satisfactory results. I visited this boat on her way down the river, to witness her performance. The department is already in possession of the most unquestionable proofs of the efficiency of this machine, drawn from its hitherto successful operations; but I cannot here omit an opportunity of rendering the merited tribute of praise to its excellence, and to the ingenuity of its inventor. No machine can surpass it in its adaptation to the work, in the execution of which it is now engaged. The machine is simple in its construction, and easy in its application, while in power it has been found adequate to overcome promptly every obstacle it has yet encountered. Through the agency of this machine, the largest snags and logs are extracted with ease, many of which without its intervention, could never have been removed. The value of such an auxiliary, in the annual improvement of the Mississippi, is commensurate with the importance of the work."

No. 9.

We, Peter Tellon and Martin Himes, steamboat builders at New Albany, Floyd county, Indiana, do hereby testify to the value of the patent of the snag-boat of Captain Henry M. Shreve, of St. Louis, Missouri. Three of those boats were built by us under the instruction and superintendence of said Shreve. We know them to be as perfect a machine as could have been invented for the great western rivers. We also testify that we were well acquainted with the Mississippi and Ohio rivers between New Orleans and St. Louis, and Louisville, Kentucky, prior to the invention of the snag-boat, and have frequently passed through the same part of those rivers since the snag-boats have been operating on them, and do unhesitatingly state that the improvement made is very great, particularly in the Mississippi river, where the risk from snags has been reduced fifty to one. We also believe that there were no other means known by which that great work could have been effected but by the snag-boat; at least it has lessened the expense of executing the work at least fourfold, and by its operation has increased the value of the public lands on the Mississippi, Arkansas, Red, and Missouri rivers many millions of dollars. We also are firmly of the opinion that Henry M. Shreve, late superintendent for improving the western rivers, is the inventor of the snag-boats in all their parts, and that he is entitled to a liberal compensation for his patent of those boats, which in our opinion is worth at least one hundred thousand dollars to the United States, for the services it has already rendered, and the use of it for many years yet to come.

Witness our hands and seals at New Albany, this 27th day of December, 1841.

PETER TELLON. [L. S.]
MARTIN HIMES. [L. S.]

Before me the undersigned, William Hardin, of the city of New Albany, Floyd county, and State of Indiana, notary public by authority of law, duly appointed and qualified, this day personally appeared Peter Tellon and Martin Himes, citizens, the signers to the foregoing affidavit, and did upon their oaths declare that the same was true in all its parts to the best of their knowledge and belief.

In testimony whereof I have hereunto set my hand and affixed my [L. S.] notarial seal, at my office in the city of New Albany, Floyd county, Indiana, this 27th day of December, 1841.

WILLIAM HARDIN,
Notary Public.

No. 10.

I, Israel S. Moorhead, of the State of Arkansas, do hereby make affidavit, that I commanded the United States steam snag-boat Heliopolis, for three years in the improvement of the navigation of the Mississippi and Arkansas rivers, and I most unhesitatingly say that

I believe the snag-boat to be a machine as perfect in its construction as it is possible to be, for the purpose of removing snags and other obstructions from the bed of the western rivers. That it is powerful beyond conception, and adequate to any duty required of it to perform, and during the whole period of my command of that boat I never met with a snag or tree in those rivers which was not taken out by the roots, and so completely removed as to be effectually harmless to the navigation. I also affirm that I was in command of steamboats for several years previous to my services on the snag-boat, and that I was familiarly acquainted with the Ohio and Mississippi rivers, from Louisville to New Orleans, before the snag-boats were invented, and have been in the same trade since I declined the command of the Heliopolis, and I know that the risk of the navigation of the above named rivers is not so great as it was before the snag-boats were invented by a vast difference, I should say at least fifty to one.

I was also engaged three seasons in the removal of the Great raft, in Red river, and I am well acquainted with the vast importance of that stupendous improvement, and know from personal observation that all that immense body of firstrate cotton land, extending from the original foot of the raft, up to the mouth of the Keameche river, near Cantonment Towson, a distance of near eight hundred miles, was of no value previous to the commencement of the removal of the raft, and that it is now all as valuable as any land in the United States, and worth many millions of dollars.

I further state that I know of no other means by which this great work could have been accomplished, without the aid of the snag-boat, unless the government would have gone to at least four times the expense.

I also certify that I was familiarly acquainted with Captain H. M. Shreve, when the snag-boats were spoken of, and know that he, Captain Shreve, was the original inventor of the machine, and do verily believe that it has saved to the United States many millions of dollars, and firmly believe that from one to two hundred thousand dollars is as small a compensation as the government could reasonably expect to get so valuable a patent-right for.

J. S. MOORHEAD.

Sworn to and subscribed before me at my office in Phillips county, in said State, this 10th day of January, A. D. 1842.

E. P. SCANTLAND, [L. S.]
Justice of the Peace.

STATE OF ARKANSAS, *County of Phillips, sct:*

I, Jno. S. Horner, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that Edward P. Scantland is an acting justice of the peace, within and for the county aforesaid, and that full faith and credit are due all his official acts.

In testimony whereof I have hereunto set my hand as clerk, and affixed the seal of said circuit court at office in Helena, this [L. S.] 10th day of January, A. D. 1842.

JNO. S. HORNER, *Clerk.*
By R. S. HORNER, *Deputy Clerk.*

No. 11.

Extract from the annual report of the Secretary of War, from document No. 2, of session of 1840, '41, *page* 24.

"It is to be regretted that Congress neglected at its last session to appropriate the small amount asked for clearing away the timber lately accumulated at the Red river raft, which obstructs the navigation of that stream. The expenditure necessary for this purpose is perfectly legitimate, as all the necessary supplies for the troops stationed at Fort Towson are transported up this river; and the measure is recommended by its economy, the *additional cost* of transportation by land for *one year*, when this navigation is obstructed, being *greater than the amount required to defray the necessary expense of removing the drift timber.*"

Extract from the annual report of the Engineer Department at session of 1839, '40, *from Executive document No. 2, page* 170, *showing what was "the amount required to defray the necessary expense of removing the drift timber," as above stated, than which the cost of transportation of supplies one year was greater.*

"As exhibiting clearly the probable nature of future works, their objects, and the vast amount of the interests connected therewith, reference is again made to the report of the superintendent, whose project of improvement has the approbation of this department."

Extract of project and estimate here referred to is at page 210, *as follows:*

"Estimate of the funds required for the improvement of the navigation of the Red river during the year 1840. Amount $85,000."

No. 12.

I, William Cooper, do hereby certify that I have commanded the snag-boat Archimedes several years, when operating on the Mississippi river, the Arkansas river, and Missouri river, and that I have raised the largest snags found in them, and have never in all my experience met with a snag in any of those rivers that has not been taken out and so completely destroyed that a vestige of it was not left by which a craft of any description navigating those rivers could be damaged in the smallest degree. Many of the snags removed under my directions were of the largest size trees, the roots of which were imbedded many feet in the mud and sand in the bottom of the rivers. I have no hesitation in stating that the snag-boat is as complete and perfect a machine as could be invented, for the purpose of improving the navigation of the great western rivers, and that from my personal knowledge and practical experience of the navigation of the western rivers, I believe the improvement effected by the snag-boats has lessened the risk of navigation at the rate of at least nine-tenths—

that is to say, that the risk is now not over one-tenth as great as it was before the invention of the snag-boat. I also testify that it is my decided opinion that if the government had made the necessary appropriations for the boats to have worked during the two last years that the present risk from snags would have been nearly or quite removed. I am also of the decided opinion that the advantage to the United States from the operations of these boats since their invention, in the amount of property saved from destruction, the enhancement of the public lands on the Red river, Arkansas, Mississippi, and Missouri, and the reduced prices of freight and consequent low rate of insurance, cheapness of passages, may safely be estimated at $20,000,000; and that from these facts I could not estimate the value of the patent at a less sum than one hundred thousand dollars. I also testify that I verily believe Captain Henry M. Shreve, late superintendent of the improvements in the western rivers, to be the inventor of the snag-boat, and that the United States justly owes him a very large sum for his patent for that splendid invention.

WM. COOPER.

STATE OF MISSOURI, *County of St. Louis, ss:*

This day personally appeared before me, a justice of the peace, in and for said county, William Cooper, who being duly sworn, upon his oath says, that the facts contained in the foregoing statement are true.

WM. COOPER.

Sworn to and subscribed before me this 27th day of December, A. D. 1841.

GEORGE A. HYDE,
Justice of the Peace.

No. 13.

HENDERSON COUNTY KENTUCKY,
January 30, 1842.

I, John K. Dillingham, of Henderson county Kentucky, do hereby make affidavit in relation to the value of the patent of Captain Henry M. Shreve, for the invention of the snag-boats; that I have at different times, in the last twelve years, commanded the several snag-boats on the Ohio, Mississippi, Arkansas and Red river, and do unhesitatingly state, that I believe the snag-boats to be the best machines that could be invented for extricating timber, in all its forms, from the beds of all the great rivers; and that, in all my experience, I have not seen a snag or planter that the boats could not take up and destroy, so as to render it completely harmless to the navigation. I also testify that I was familiarly acquainted with the navigation of the Mississppi river before the invention of the snag-boats, and know from my own personal observation that the danger of the navigation from snags is not now one fiftieth part as much as it was thirteen years ago. I also affirm

that I was employed in the removal of the Great raft in the Red river, and do know that the public lands on that river were of but little value in the neighborhood of the raft until the raft was removed, and that the lands now on the river throughout the whole length of the raft, a distance of about one hundred and sixty-five miles, have all been sold, and the principal part now in a high state of cultivation; and that that immense body of fine land above the head of the raft for some six hundred miles has been made valuable to the United States by the removal of the raft. I have no hesitation in saying that, it is my opinion that, saying nothing of the immense improvement of the value of public lands, effected by the improvements of the snag-boats, and, I think without the snag-boats, the same work done, if it could be done without them, would have cost the government four or five times as much as it did.

In estimating the value of the patent, under the facts stated above, I could not put it a less sum than one hundred and fifty thousand dollars.

This day, John K. Dillingham, personally appeared before me a justice of the peace for Henderson county, and made oath that the above statement is true and correct, this the 30th day of January, 1842.

HAYWOOD ALVES, *J. P.*

No. 14.

ST. LOUIS, *December* 20, 1841.

I, Henry M. Shreve, of St. Louis county, State of Missouri, do hereby make affidavit, that I was appointed on the 10th of December, 1826, to superintend the execution of a contract, then existing between the Secretary of War and Mr. John Bruce, of the State of Kentucky, for improving the navigation of the Ohio river, from Pittsburg to the Mississippi, and the Mississippi river from the mouth of the Missouri river to New Orleans, at a salary of six dollars per diem, and 2½ per cent. for disbursements not exceeding two dollars per diem, and that under date of the 9th of April, 1827, I was informed by the chief engineer that Mr. John Bruce's contract was forfeited by the War Department, and requiring me to report to the department my opinion of the probable cost of removing certain obstructions from the Mississippi river, and authorizing me to commence that work by hired labor on account of the United States, and that preparations were made accordingly, and the work prosecuted by me at the salary of six dollars per diem, and 2½ per cent. for disbursements, until the 3d of July, 1832, when Congress passed a law fixing my compensation for those two rivers (Ohio and Mississippi) and superintending the improvement of the Arkansas river, at three thousand dollars ($3,000) per annum. That subsequently, on the 8th of February, 1833, I was ordered to remove the Great raft in Red river. Subsequently I was ordered to superintend the removal of obstructions in the Cumberland river; and in 1839 I was ordered to execute the improvement of the Missouri river, which I continued to do up to the 17th of October, 1839.

All of which three additional works were done by me, and no additional allowance received by me, notwithstanding the distinct responsibilities imposed upon me in the disbursement of large sums of money at great risk, being obliged to transport large amounts to distant points, where those works were located, and that necessary additional expenses were incurred by me to the amount of about eight hundred dollars a year, which actually reduced my remuneration from three thousand dollars to twenty-two hundred per annum; when at the same time three times the responsibility and labor was placed upon me that could have been anticipated by act of Congress, of 3d July, 1832; nor do I believe that a competent superintendent could have been engaged to execute such a stupendous, extremely arduous, difficult, and dangerous work as the removal of the Great raft in the Red river, for a less salary than six thousand dollars a year. I therefore consider it extremely onerous, that such heavy burdens should be placed upon me, to the great injury of my income, by the additional expenses in an extremely dangerous and unhealthy climate, without any remuneration whatever; but, on the contrary, producing great losses to me, by my additional expenses.

And, considering the magnificent and boundless advantage derived to the United States, by the enhancement of the public lands, on all the western rivers where the snag-boats have operated, and the immense saving of property to the commerce of the Mississippi river and its tributaries, as well as the many hundreds of human lives that have been saved by the improvements in their navigation, effected by the operations of the snag-boats upon them, Captain Bowman, of the corps of United States engineers, states, that without them the Mississippi, Arkansas, and the Red rivers could not have been cleared of snags, rafts, &c., in a century; and from the report of the Secretary of War, that by the removal of the Great raft in the Red river, it saves nearly $100,000 a year in the transportation of supplies to Fort Towson.

In consideration of these facts, I hereby make oath, that I believe two hundred thousand dollars to be not more than one-fifth of the value for the patent for the snag-boats.

HENRY M. SHREVE.

Sworn and subscribed to before me, this 30th of December, 1841.

ALPHONSO WETMORE, *J. P.*

No. 15.

Extract from the report of George Dutton, lieutenant of engineers, to the United States Engineer department, relative to the progress and state of the operations for the improvement of the Ohio river, from Executive Documents, No. 2 of session of 1835-'36, *page* 177—*dated Pittsburgh, October* 25, 1835.

"The snag machinery invented, and used with so much effect, by Henry M. Shreve, Esq., in the removal of obstructions to the navigation of the Mississippi and Red rivers, and which combines, in its con-

struction, much simplicity of arrangement with great power of action, was, after a short inspection, unhesitatingly adopted for the removal of similar obstructions in the Ohio river above the falls; it was, therefore, determined to proceed, without delay, to the construction of four of these machines, for application on the river."

No. 16.

Extract from the Annual Report of the Engineer Department, for the year 1829, *from Executive Documents No.* 2, *session of* 1829-'30,—*page* 76.

"*Mississippi river.*—To conduct the operations for improving the navigation of this river, with more effect, the superintendent, Captain Henry M. Shreve, was authorized to construct a steamboat of such strength, and furnished with such apparatus as can be applied to the removal of snags. This boat having been completed, and put in operation, has according to the superintendent's report fully answered the purpose. By means of its machinery, *a snag or sawyer of the largest dimensions is removed in a few minutes;* and it is expected that the continuance of the operation will go very far to effect the important and highly desirable object of freeing the navigation of the Mississippi from those dangerous impediments."

No. 17.

Extract from the inspection report of A. H. Bowman, lieutenant of engineers, to the United States Engineer Department, from Executive documents of session of 1837-'38, *No.* 3, *page* 427, *relative to the progress and state of the operations for the removal of the Great raft in Red river, dated Memphis April* 16, 1837.

"It is difficult to form a just conception of the *magnitude of this work*, or fully to appreciate the *important results* that are to flow from it.

"The river is navigable more than a thousand miles above the raft, and through a region not surpassed in fertility by any on the continent.

"This extensive country is comparatively unsettled; its vast resources and wealth remain to be developed. Although enterprise has pushed forward, notwithstanding the apparently insuperable barrier opposed by the raft, yet hundreds are looking to its removal as the signal for entering the country. The success of the undertaking, once involved in doubt, and the permanent advantages that must result from it, are no longer matters of uncertainty.

"The indefatigable industry, zeal, and perseverance of the superintendent (Captain Henry M. Shreve,) have triumphed over difficulties well calculated to intimidate him—bayous have been closed with masses of timber; *islands of huge logs, for centuries imbedded together*

and covered with living trees, have been removed; the timber composing them have been dragged on shore, or, being cut up and cast upon the current, has passed away.

"Indeed, every mile in ascending, bears evidence of the immense labor bestowed upon its improvement."

No. 18.

Extract from House report, No. 375, of 24th Congress, 1st session, page 11, being reply of the Ordnance department to an inquiry from the Committee on Military Affairs.

"It seems to have been a rule very generally established (and adopted in some cases by the Ordinance department (to grant inventors one-third or one-half the saving produced by the invention."

No. 19.

I, Henry E. Lee was in the employment of Captain Henry M. Shreve, as captain of the steam boat Pearl, whilst removing the Great raft in Red river, that I also commanded the steam snag-boat Heliopolis, during one season, and do unhesitatingly state, that I received my instructions from Captain Henry M. Shreve, in everything relating to said work for the removal of said raft, and also as to the working of the snag-boat Heliopolis. I also state, that the whole of the work for the removal of the raft in Red river, whilst I was engaged in it, was superintended and directed by Captain Shreve in person, and that all of the captains of boats received their daily instructions from Captain Shreve, who carried on the work on his own plan, and that he conducted it with ability and untiring energy. I was well acquainted with the steam snag-boats, built by Captain Henry M. Shreve, and believe him to have been the original inventor of said boats. I have been engaged as master and pilot on steamboats for many years, and am well acquainted with the great improvement that has been made in the navigation of the Mississippi river by the Twin steam snag-boats, and I know of no other means by which the improvement could have been made. I have seen the light single snag-boats, built since Colonel Long has had charge of the river improvements, the Gopher and Dragon, and do not believe that either of those boats could have removed any of the most formidable and dangerous snags that have been (so many thousand of them) removed by the Twin snag-boats. Those light boats, the Gopher and Dragon, were fitted with derricks and tackles, in the same manner as the steamboats Java, Souvenir, Pearl, &c., used by Captain Shreve, in the removal of the Red river raft, and had no other power of rasing snags than the block and tackle, nor had those boats the capacity to bear the weight of a large snag.

HENRY E. LEE.

STATE OF KENTUCKY, *Jefferson county, ss.*

This day, Henry E. Lee, whose name is affixed to the foregoing writing, personally appeared before the undersigned, a justice of the peace, in and for the county and State aforesaid, and subscribed and made oath to the truth of the statement therein made. Given under my hand this 18th December, 1849.

G. W. CHAMBERS, *J. P.*

STATE OF KENTUCKY, *Jefferson county, ss.*

I, Curran Pope, clerk of the county court, of the county aforesaid, do certify that G. W. Chambers, who has signed the foregoing certificate, is an acting justice of the peace in and for said county, duly commissioned and sworn, and that full faith and credit are due to his official acts.

In testimony whereof, I have hereto set my hand and affixed my [L. S] seal of office, this the date above.

CURRAN POPE.

No. 20.

I, James C. Blair, of the city of Louisville, Kentucky, was in the employment of Captain Henry M. Shreve, as clerk, for many years, during his superintendence of the improvement of the navigation of western rivers, and the removal of the Red river raft. And I do hereby state, that I always believed him, the said Captain Shreve, to be the true and original inventor of the Twin snag-boat. Captains Tyson and Dillingham were in his employment in said service, and I never knew or heard during their engagement with Captain Shreve, that they ever operated in any other manner than agreeably to the direct instructions of said Shreve, (the same being similar with the other captains in his employment.) Or that said Tyson and Dillingham in their superintendence of the building of any of the snag-boats, ever did anything more than comply with Captain Shreve's express directions and instructions from time to time, in having said boats built and completed in accordance with said Shreve's own plan and wishes. I also never knew or heard that Captain Tyson had any share in the projecting or planning of any of said work, except in the execution of it, under either the personal or written instructions or orders of Captain Shreve, or that he was entitled to the credit of the invention of any part of said Twin or single snag-boats.

J. C. BLAIR.

Sworn to before me this 8th day of January, 1850.

J. W. EARICK, *J. P.*

STATE OF KENTUCKY, *Jefferson county, sct.*

I, Curran Pope, clerk of the county court for the county aforesaid, do certify that J. W. Earick, esq., whose name is attached to the foregoing certificate, is and was at the date thereof, an acting justice of the peace, in and for said county, duly commissioned and sworn, and that full faith and credit are due to his official acts as such.

In testimony whereof, I have set my hand and affixed the seal of [L. S.] this county, this 8th of January, 1850.

CURRAN POPE.

No. 21.

LOUISVILLE, *September* 29, 1833.

SIR: I have to acknowledge the receipt of your letter dated the 5th instant, relating to the removal of the Great raft in Red river, and thereby improving the navigation of that river in a more permanent manner than by excavating canals, and depening bayous around the different sections of the raft, and requesting my views on that subject.

From the best information I have on the subject of the raft alluded to, I am of the opinion that, by the application of the proper means to accomplish such an object, the raft may be removed at much less expense than canals can be excavated around the raft, and a better navigation would of course be obtained by the removal of the rafts than can by any means possibly be obtained by canals, at any expense.

To accomplish that object, I would recommend that the banks of the river should be cleared of all the trees that are now on its banks, in and near the water, which are so situated as to be liable to obstruct the free passage of the floating timber as it passes down the stream after it may have been loosened from the lower end of the raft. By this means, the masses of timber which now form the Great raft, after being loosened from its lower end, will find its way to the Mississippi river, and from thence to the Gulf of Mexico, and will not be liable to lodge at any other point and form similar rafts. The labor of clearing the timber above alluded to, from the banks and bed of the river below the raft, will doubtless be attended with less labor, and consequently less expense, than will otherwise be required to loosen and keep the timber from the raft afloat in its passage down the Red river to the Mississippi. Great benefit to the navigation of the river below the raft will also be obtained by the removal of the timber alluded to.

The small steamboats now at work in the Ohio river, may be so worked as to accomplish the object desired, by working them during that part of the year when they cannot be employed on the Ohio river, and at the most favorable season of the year to execute the work required for the removal of the raft; say from the first of January to the first of July. The snag-steamer Archimedes, is also well adapted to execute a portion of the work which could not be accomplished by

the Ohio boats, to wit, the raising of heavy trees or snags that may, and doubtless will, be found in the raft, with the roots buried in the mud, similar to the snags of the Mississippi river. That boat may be employed in the same service, from the first of March to the first of July, without any detriment to the improvement of the Mississippi river.

To accomplish the object, I would recommend, first, to clear the banks of the trees below the raft, as before described, a distance of about eighty miles, which is as low down as that work will be necessary. Secondly. Commence work at the lower end of the raft, by hauling out the logs that form the raft, by steam power, which may be advantageously applied by the use of the boats alluded to. Thirdly. As the work of removing the raft progresses up the river; remove the trees which grow up from small islands in that part of the river, which is the cause of the formation of the raft. Those trees should be taken out by their roots, and the mud banks formed around their roots removed, which will not be a work of much labor, if the necessary skill is put in requisition to perform the task. By this means the first cause of the formation of the raft will be removed, consequently the improvement will be permanent.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c., &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington, D. C.

No. 22.

MT. BRADOCK, *September* 18, 1836.

SIR: Your communication of the 10th did not reach me until the 16th instant. I am surprised to learn from it that there are persons who refused to allow to you the credit of inventing and planning the United States steam snag-boat Heliopolis, her working-gear, &c., &c., for I think this fact is too well established, especially in your section of the United States, to be disputed. The gentleman you name as asserting that I had more to do in said invention than yourself, has certainly been misinformed. The mistake may possibly have originated in the circumstance of my having drawn the first rough draft of the steamboat George Washington you built at Cincinnati; but as to the Heliopolis, I have never claimed any part in the inventing and planning of her, but, on the contrary, have always considered you alone as the inventor and planner of said boat. It is true that, after I had worked the old machine boats for some time, I suggested to you the propriety of applying steam power to the removing the snags, &c.; for I was satisfied that, until we brought to our aid the power of steam, there could be but little good done to the navigation of the Mississippi river. I was much pleased some time afterwards, upon receiving a letter from you, to find you had already commenced a steam snag-boat; and the benefits resulting from the application of this boat to the purposes of removing the obstructions from the bed of the Mississippi

river are well known to the public. I can say with safety that during the whole of the time I superintended the operations on the Mississippi with the Heliopolis, (which was near four years,) I never could find a single fault with her construction, or the appliances used in removing the obstructions to the navigation of the Mississippi river; and to this day I could not point out any improvement that could be made on the Heliopolis, that would be advantageous in operating among the different obstructions on the rivers.

Although I am opposed to the principle of a government agent having extra compensation for his services, when there has been a stipulated salary fixed, yet there can be no doubt but you are justly entitled to a suitable compensation for your invention of the Heliopolis.

Respectfully, your obedient, humble servant,

JOHN SOWERS.

Captain H. M. SHREVE,
Superintendent, Louisville, Ky.

No. 23.

CONGRESS OF THE UNITED STATES.—28TH CONG. 1ST. SES.

IN THE HOUSE OF REPRESENTATIVES.—*May* 17, 1844.

Ordered, That the memorial of Captain Shreve be referred to a select committee, and that the following members constitute said committee, viz:

Joseph A. Wright, of Indiana; William L. Goggin, of Virginia; Edward Cross, of Arkansas; Shephard Cary, of Maine; James Pollock, of Pennsylvania.

Attest: C. J. McNULTY, *Clerk.*

No. 24.

DEPARTMENT OF WAR,
January 19, 1842.

SIR: In answer to your letters of the 12th and 17th instant, you will receive herewith enclosed the report of the colonel of engineers, which contains all the information in this department in relation to Captain H. M. Shreve's operations, referred to by the select committee.

Very respectfully, your obedient servant,

J. C. SPENCER.

Hon. E. CROSS,
Chairman Select Committee, &c., Ho. of Reps.

No. 25.

WASHINGTON, *July* 5, 1842.

SIR: The State of Indiana having passed the enclosed resolutions, it is deemed by the undersigned incumbent on them to request the Committee of Ways and Means to offer some amendment to the army bill, as shall carry into effect the anxious wishes of that State, which also are those of the entire Western States, in relation to the following matter: An amendment was made to the army appropriation bill in the Senate, making an appropriation of $100,000 for removal of the obstructions in the western rivers. The obstructions in the western rivers being snags, this appropriation cannot possibly be carried into effect without the use of the snag-boat. Henry M. Shreve, esq., holds the patent under the seal of the United States of America, of the (in the words of the patent) "exclusive right and liberty of *making*, *using*, and *vending* the snag-boat." Mr. Shreve has written two letters to a gentleman here, formally declaring that without the patent of the snag-boat is purchased he will procure an injunction from the courts of the United States, forbidding any captain of a snag-boat or superintendent of western river improvement to use the snag-boats. No man will dare to use the snag-boats under such circumstances, and these necessary improvements, of vast and vital importance to the whole west, cannot go on. The committee of the House of Representatives, to whom Mr. Shreve's memorial praying the purchase of his patent at $100,000 was referred, have reported in favor of purchasing the same at $40,000, one of which reports is herewith enclosed. The improvements already made in the western rivers are of an extraordinarily grand and magnificent character, and the United States have already saved and gained by its use tens of millions of dollars. The War Department in its annual report of 1840 states, that by the removal of the raft in Red river (which can be accomplished only by the snag-boat) that $85,000 per year would be saved in transportation of supplies to Fort Towson, by the government. Thus showing that by the improvements effected in that *single* river by the snag-boat, double the amount will be saved *every year* of the sum in the report. The Committee on Public Lands in their report in 1834 and 1836 state: "The Committee are persuaded these facts will not only convince the House that the destruction of the raft is highly desirable in a military point of view, but that it will add some *eight or ten millions* to the value of the public domain on the waters of Red river, and eventually be productive of incalculable agricultural and commercial advantages." The vast property which the United States itself has annually at stake on these rivers, liable to be destroyed by snags, consisting of supplies to forts and military posts, of provisions, &c., arms and munitions of war, and supplies to the Indians under treaties—this large amount of about two millions a year, constantly at imminent risk, would of itself more than justify this appropriation. In one instance, a steamboat containing arms belonging to the United States, valued at $700,000, was wrecked by snags, and a large proprotion of this sum lost. The annual agricultural productions of the western States amount to $432,000,000, and in less than four years

$2,113,415 were lost on these waters by the destruction of boats and their cargoes by these obstructions. Half the States of this Union are directly and intensely interested in the removal of the obstructions of these rivers. The Committee of the House, of the present session, state: "The invention is not only eminently useful in a national point of view, but such as cannot be dispensed with, except at a *serious sacrifice* of time and money in the prosecution of improvements now in progress and contemplated in the western rivers." While half a million of dollars is estimated for mere improvements in navy yards, surely the western States, with an internal commerce vastly exceeding the maritime commerce, are of right entitled to this small appropriation.

The undersigned, therefore, request that the Committee of Ways and Means offer an amendment to the clause in the army bill which appropriates a sum for the improvement of those rivers, as follows: "And forty thousand dollars is hereby appropriated to the payment of Henry M. Shreve, being in full for the purchase of the patent of the snag-boat."

R. W. THOMPSON,
H. J. LANE, *M. C.*
JAS. H. CRAVENS,
J. L. WHITE,
D. WALLACE.

Hon. MILLARD FILLMORE,
Chairman of Committee of Ways and Means.

I unite in the above request.

JOHN T. STUART.

The legislature of Kentucky having also adopted resolutions on the subject of Captain Shreve's snag-boat, the undersigned, representatives from that State, unite in the foregoing request.

GARRETT DAVIS,
B. Y. OUSLEY,
PHILIP TRIPLETT.

The undersigned members from Ohio, concur in the above recommendation.

N. G. PENDLETON,
W. RIDGWAY.

No. 26.

FAYETTE COUNTY, *State of Pennsylvania, ss.*

Personally appeared before me, the subscriber, one of the justices of the peace in and for said county, John Sowers, and upon his oath says, that he was assistant superintendent to the late Samuel McKee, esq., deceased, who was charged by the government with the superintendency of a contract entered into with the government by Mr. John Bruce, of Kentucky, for the improvement of the Ohio and Mississippi rivers; that a few months after entering upon said duty, the said Samuel

McKee died, and that he, the said Sowers, then received from the department the appointment of chief superintendent temporarily; and that, whilst acting in this capacity, he felt it his duty to represent to the department that, in his opinion, the boat and fixtures used by Mr. Bruce were not such as would insure the fulfilment of his contract; that the department instructed the said Sowers to put a stop to the operations of Mr. Bruce, which he accordingly did, at a point some distance below the mouth of the Ohio river. Captain H. M. Shreve having received the appointment of chief superintendent, the said Sowers resumed the duties of assistant superintendent; that the said Shreve and Sowers constructed at Louisville a model for boats to be used on the rivers. Captain Shreve had some boats constructed after this model, and the said superintendent did the working with those boats; and although he considered them much superior to the boats used by Mr. Bruce, yet, upon a full trial, found that they did not answer expectations; and then said Sowers suggested to the said Shreve the propriety of bringing the power of steam to aid in the work. Said Shreve approved the suggestion, and built the U. S. steam snag-boat Heliopolis; the said Sowers superintended the fitting up said boat and commanded her for some four years, and found her to be of immense advantage in removing obstructions from the bed of the rivers, which must be well known to the public. The said Sowers further says that, after much experience in improvement of the rivers, he could not now suggest an improvement on the steam snag-boat Heliopolis. The forward connecting beam, usually called the snag-beam, was composed, as well as I can recollect, of thirty-six trees, was about nine feet wide and perhaps three feet deep, extending from outside to outside of the boats, and plated in front with a double thickness of boiler iron, all firmly bolted together. This beam was found very useful when trees were deep and firmly planted. It is the opinion of the said Sowers that, without this beam, some trees could not have been removed. The said Sowers further says he has always considered Captain H. M. Shreeve as the inventor of the steam snag-boat Heliopolis, and that Captain Tyson had nothing to do with it, and that the fact of Shreve being the inventor can be well established at Louisville and New Albany.

JOHN SOWERS.

Affirmed and subscribed before me this 1st day of February, A. D. 1850.

W. W. STUMPH, *J. P.*

No. 27.

Extract of a letter from Captain George Dutton, of the United States corps of engineers, dated at Fort Macon, Beaufort, North Carolina, December 11, 1841.

Captain Dutton had charge of the improvements in the Ohio river above the falls for several years, in which the snag-boat was used, and therefore a judge of it.

"I take great pleasure in testifying as far as my knowledge will warrant to the merits of the machinery invented by Captain Shreve for the removal of obstructions to the navigation of the western waters, and consider it an important and valuable invention for these or similar objects, and that the western country will continue to derive great advantages from its use I am entirely satisfied. It is also my opinion that Captain Shreeve should be amply and liberally rewarded, not only for the invention which he has been at so much pains to perfect, but for his indefatigable perseverance in the removal of the Great raft in Red river, the important results of which I consider may be traced to the nature of the machinery used by Captain Shreve, and the skill which he has displayed in its application.

"As regards your inquiry respecting the specific value of the patent, I have not the means at hand of making a comparison between it and other inventions of an analogous character, but that it is of great value to the United States, and to the western country in particular, cannot be denied. I would suppose from the effects *already brought about* by its use, that its value would not be overrated at fifty thousand dollars.

"And in respect to the second branch of your inquiry, I am induced to believe, from all I can learn, that the direction of the works for removing the Great raft was fully equal to the superintendence of the operations on the Ohio, Mississippi, and Arkansas rivers, which also devolved upon him.

"Hoping that the invention and services of Captain Shreve may meet with the reward they merit, I remain, &c.,

"GEORGE DUTTON,
"*Captain United States Engineer.*"

No. 28.

LOUISVILLE, *July* 15, 1828.

We, the undersigned, being owners, agents, masters, and pilots of steamboats navigating the Mississippi river, do hereby certify that we are of the opinion that the improvement of that river, by removing snags, &c., from its bed, will be much facilitated by the building of a steamboat for that purpose. We have, many of us, seen a plan of a boat recommended by Captain H. M. Shreve, which, we are informed, is now building at New Albany, Indiana, and believe that to be of a better construction than any boat that could be either bought or hired; nor do we believe that any boat can be procured, suitable for that work, without building one expressly for that purpose.

We also certify that, from what we have seen or heard, we believe the navigation of the river to have been much improved by the work done on it last year by said Shreve in removing snags, roots, &c., from the sand bars, islands, chutes, &c., which work we hope will be persevered in, on a similar plan, until completed.

J. G. Barclay & Co. Angereau Gray.
Daniel Wurtz. Joseph Swagar.

John D. Colmesril.
Brown Cozzens.
J. Gordon.
John Shallcross.
John C. Bucklin.
Joseph Pierce.
J. Straver.
W. McKnight.
Barr & Lodwick.
James Walls.
John B. Kimball.
William H. Neilson.
W. H. Pope.
Anderson Miller.
James W. Byrne.
John T. Gray.
John Sowers.
Isaac and Willis Stewart.
J. Call Bartlett.
J. D. Coult.
W. D. Jones.
John W. Russell.
William Gay.
Robeson DeHart.
C. D. Howell.

John S. Snead, no owner of a steamboat, but believes from information what is stated above to be correct.

Thomas W. Bakewell is convinced of the necessity of a steamboat, and that there is not any now built suitable; is not acquainted with the particular construction of that referred to above.

Levi James is decidedly of the opinion, from his particular observation for the last two years, with reference to removing the obstructions to the navigation of the Mississppi, that there is no practical mode of removing the snags out of the main channel without the aid of steam power.

P. PENNYWIT,
D. JENKINS.

D. Greene believes that such a boat will operate powerfully on snags.

JACOB WALKER,
ROBERT G. ORMSBY.

No. 29.

I, Israel S. Moorhead, of Louisville, Kentucky, do hereby make affidavit, that I was employed by Captain Henry M. Shreve, superintendent for the removal of obstructions to the navigation of the Ohio, Mississippi, Arkansas, and Red rivers, for several years. Part of which time was on board the steam snag-boat Heliopolis, the first boat built by the said Shreve, or any other person, for the purpose of removing snags, &c., by steam power, and I believe the Heliopolis (the first) was as effective, or more so, than any other boat that has been built for the same purpose since her time. I was on board, in charge of the Heliopolis, for two seasons or more, and during that time I never met with a snag or tree in those rivers which was not removed by the roots or broken out by the butting-beam of said boat, and so completely removed as to be perfectly harmless to the navigation. I also affirm that I was in command of steamboats in the merchant service for several years previous to my employment on the snag-boats, and that I I was well acquainted with the Ohio and Mississippi rivers from Louisville to New Orleans, before the snag-boats were invented or used for

the removal of obstructions to the navigation of said rivers; and that I have been in the same trade since I left his employment as aforesaid, and that I know that the risk on the Mississippi river is not so great by at least nine-tenths as it was previous to the operations of said snag-boats in the removal of obstructions to its navigation. I was also engaged three seasons in the removal of the Great raft, in Red river, in which the twin snag-boat was used to great advantage in removing snags and other obstructions from the river and its banks, which could not have been done without her means, and was of great value in making cut-offs, &c. This work was superintended by Captain Shreve the greater portion of the time, and in his absence by myself, assisted by Captain A. Tyson and others. All of which work was carried on from the plans and instructions of said Captain Henry M. Shreve, and superintended by him in person, the greater part of the time. And I do further state, that Captain H. M. Shreve was the original inventor of the twin snag-boats, and built the first single snag-boat called the Eradicator, which was used to great advantage in the removal of the raft of Red river. Since that time, there have been two boats built by Colonel Long, on single hulls, called the Dragon and Gopher. Those boats were built on the same plan as those used by Captain Shreve in the removal of the raft. The power being applied in the same way, and all the difference in the boats was, that those used for the removal of the raft were old merchant boats, and the others being built, one with a square bow, and the last with a bow like that of the "Eradicator," built by Captain Shreve. These boats I do not consider of but little value, only in small streams, and in the Ohio river at low water, where they may be used to advantage in removing logs and other obstructions from the bed of the river. They are slow in operation, and have not power sufficient to be worked to advantage in either the Mississippi, Missouri, or Arkansas rivers. And further, I do not think that there is any praise or credit due to any other person or persons than to him, the said Shreve, for the invention of either the single or twin snag-boat. And I do believe that the invention and use of said boats has saved to the United States many millions of dollars. And I do firmly believe that the said Shreve should be well remunerated for his invention; and under his patent, I think that $8,000 for each and every boat that has been built, or that may hereafter be built, would be a small compensation for so valuable an acquisition to the government of the United States, for the purposes for which they were invented and designed by said Shreve.

J. S. MOORHEAD.

Sworn to before me this 7th day of January, 1850.

J. W. EANICK, *J. P.*

STATE OF KENTUCKY, *Jefferson county, sct:*

I, Curran Pope, clerk of the county court of the county aforesaid, do certify that J. W. Eanick, whose name is signed to the within and foregoing affidavit, is an acting justice of the peace in and for said county, duly commissioned and sworn, and that full faith and credit is due his official acts as such, and signature is genuine.

In testimony whereof, I have hereunto set my hand and seal of office [L. S.] this seventh day of January, 1850.

CURRAN POPE, *Clerk.*
By HARRISON STUCKY, *D. C.*

No. 30.

Extract from report to the chamber of commerce at St. Louis, in relation to the improvement of the navigation of the Mississippi river, and its principal tributaries, &c.

"Government, however, has not escaped from losses by snags, but has sustained *several*, the total of which we have no means of arriving at. One, however, has come to my knowledge, which is so much in point, and so forcible an illustration of the consequences and dangers, that I record it. In the fall of 1838, the steamboat Alton, from New Orleans, for this port, having on board 45,000 muskets, belonging to the United States government, worth six or seven hundred thousand dollars, struck a snag opposite Cape Girardeau, and knocked a hole in her; she immediately commenced sinking, but was kept up until her freight was discharged. Nevertheless, about four hundred boxes, or one fourth of the whole, were greatly injured by the water, and nearly the whole were more or less damaged. It is conceded by all boatmen familiar with the river, and the occurrence, that nothing but the great strength of the Alton's hull, and the exertions of her officers and crew, prevented her from going down; in which event, the whole cargo would have been lost. As it was, the government had to pay a considerable sum for salvage and other expenses; was kept nearly four months out of the use of the arms, and if the vessel had gone down, the government would have lost more in this *single* shipment than it would cost to free the Mississippi and Missouri from snags.

"It seems to us, that the amounts which government has annually at risk on these rivers are, of themselves, large enough to arrest the attention of Congress, and justify a liberal appropriation."

No. 31.

Judge Washington, of the United States Supreme Court, decided in case of Evans *vs.* Weiss, vide Hall's Law Journal 3, 180, as follows:

"It must be admitted that cases of great hardship may occur; if, after a man shall have gone to the expense of erecting a machine, for which the inventor has not then and never may obtain a patent, he shall be prevented from using it by the grant of a subsequent patent, and its relation back to the patentee's prior to invention. But the law, in this case, cannot be termed *ex post facto*, or even retrospective in its operation, because the general law declares beforehand that the right of the patent belongs to him who is the first inventor, even before the patent is granted; and, therefore, any person who, knowing that

another is the first inventor, yet, doubting whether the other will ever apply for a patent, proceeds to construct a machine, of which it may afterwards appear he is not the first inventor, acts at his peril, and with a full knowledge of the law, that by relation back to the first invention, a subsequent patent may cut him out of the use of the machine thus erected." Also vide Ames *vs.* Howard, 1 Summers Rep. 482, and Evans *vs.* Eaton, 1, Pet. S. C. R.. 337.

No. 32.

Documents.

No. 2. Executive document—No. 2—Sess., 1835, '6, p. 172, Lieutenant Bowman's inspection report, dated Jan'y 31, 1835.
Doc. No. 2. Sess. 1840, '41, p. 24, annual report Secretary of War.
" 2. Sess. 1839, '40, p. 170, report Engineer department.
Doc. Ex. 2. Sess. 1835, '36, p. 177, Lt. Dutton's report, Oct. 25, 1835.
" 2. Sess. 1829, '30, p. 76, report Engineer department.
Ho. report 375. 1 Sess. 24 Congress, p. 11, Ordnance dep't report.
Senate doc. 195. Sess. 1840, '41, p. 12, letter Engineer department to H. M. Shreve. Vol. 4. July 24, 1840.
Ex. doc. 74. 21 Cong., 2 Sess., 1830, '31. Vol. 3.
Ex. doc. 2. Sess. 1840, 1841, p. 123, report Captain R. E. Lee. November 20, 1839.
Ex. doc. 2. Sess. 1840, '41, p. 24, report Secretary of War.
Ex. doc. 2. 21st Congress, improvement of Mississippi river.
" " 74. 21st, 22d Cong., Red river raft.
" " 2. 24th Cong., report of Lieutenant Dutton.
" " 3. 25th, report of Lieutenant Bowman.
House rep., 381, 1st Sess. 24th, Cong., Red river raft.
Ex. doc. 2. 26th Cong.
25th Cong., report of Engineer department.

No. 33.

Extract from the annual report of the Engineer's Department, dated December 3, 1840.

"Improvement of Red river. * * * The views of the department on the importance of this improvement have been so often expressed, that it is not conceived necessary to do more than refer to them at this time.

"Missouri river. * * * It is gratifying to learn that a very great improvement has been made in the navigation, even with the smalll sum that has been applied; and that with a comparatively moderate sum hereafter the most favorable results may be anticipated.

Extract from the Inspection Report of Captain R. E. Lee, of the corps of engineers of the Mississippi river, below the mouth of the Ohio, accompanying the report next above.

"Nothing can more strongly show the benefits that have been produced by the operations of Captain Shreve, than a comparison between the present state of the river and its condition years ago. These advantages are not confined to the navigation by steamboats, but are enjoyedin an equal degree by the great trade carried on in flat-boats, in which so large a part of the produce of the upper country descends the river. The whole number of snags that have been removed the past year amount to 5,056.

No. 34.

30TH CONG., 1ST SESS.—HOUSE OF REPRESENTATIVES.

Mr. FARRELLY, from the Committee on Patents, reported the following bill:

A bill for the relief of Henry M. Shreve, and to authorize the purchase of his patent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and is hereby, authorized to pay to Henry M. Shreve, out of any money in the treasury not otherwise appropriated, the sum of eighty-five thousand dollars, whenever the said Henry M. Shreve shall transfer and convey, in proper form, to the United States, all his right, title, and interest in and to a patent heretofore granted to him, as the inventor of the snag-boat, and relinquishes to the said United States all claim for the past use of said boat or invention, and also all claims of every other kind in anywise connected therewith, or pertaining to his service as superintendent of improvements in the navigation of any one or more of the western rivers.

No. 35.

I, John C. Carter, a lieutenant of the United States navy, being duly sworn, do depose and say: That I know Captain Henry M. Shreve, of St. Louis, Missouri, and have known him from my boyhood; and that I accompanied him in 1833 in his operations on and in the Red river raft, and that the whole plan of operation was conceived, directed, and carried on by direction of said Capt. Henry M. Shreve; and at that time, in opposition to the prevailing opinion of almost all who were then employed in those operations, of the possibility of success. I was at that time off duty from the navy, and commanded one of the steamboats engaged in the above named work. I also state that Captain Abraham Tyson commanded another of the boats thus engaged, and operated under the entire direction of said Captain H.

M. Shreve, and often joined me in the opinion that Captain H. M. Shreve could not succeed in making the removal of the raft; and that the expenditure was useless. I also state that Captain Tyson did not command the foremost boat, and although active and zealous in executing Captain Shreve's orders, by no means more so than others. One of the government snag-boats invented by Captain Shreve accompanied the first year's operations, and was made useful in pulling up the willows on the small islands in the river which obstructed the operations of the other boats, and part of the crew employed in trimming the projecting trees from the banks. I would further state, that I have been well acquainted on the western waters; once commanded a steamer on the Ohio and Mississippi revers, and have never heard a doubt expressed in relation to the credit being due to Captain Shreve for the invention of the only snag-boat which opperated successfully in removing obstructions in the rivers of the west; nor until lately, have I ever believed there could be any one to claim from him the conception, projection, and final removal of the Red river raft. To him, and to him only, belongs the credit, and I feel it a duty, and at the same time a pleasure, to testify to that which I know he so justly deserves.

JOHN C. CARTER.

Sworn before me this 24th day of January, 1850.

FRED. GROSHON,
Justice of the Peace.

RICHMOND COUNTY.

STATE OF NEW YORK, *County of Richmond, ss:*

I, Joshua Menereau, clerk of the county of Richmond, do hereby certify that Fred. Goshon, whose name is subscribed to the annexed affidavit, and thereon written, was, at the time of taking such affidavit, a justice of the peace in and for said county, dwelling in the said county, elected and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such justice, and verily believe that the signature to the said affidavit is genuine.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of the said county, the 25th day of January, 1850.

JOSHUA MENEREAU, *Clerk.*

No. 36.

I, Peter Tellon, steamboat constructor and builder at New Albany, Indiana, formerly of the firm of Tellon & Himes, contracted with Captain Henry M. Shreve for building two twin machine boats, fitted with wheels and windlasses, for removing snags, &c., from the beds of the rivers, for the use of the United States. The plan of those boats was furnished by said Shreve, and I believe them to have been the first boats ever built or used on the western rivers in any way similar to them, as related to the purchase used to obtain sufficient

power to raise snags, logs, &c. I then thought, and I still think, that Captain Henry M. Shreve was the original inventor of said boats and purchases, &c. I know that Mr. John Bruce, who had the contract for removing snags, and worked down the Ohio river, a few years before I built the said machine boats for Captain Shreve, had no boats or machines in any way similar to the machine boats built for Captain Shreve.

In the year 1828 I made a second contract with Captain Henry M. Shreve, to build a twin steam snag-boat; which boat was finished and proceeded down the Ohio river in the summer of 1829. Said boat built from a draught furnished by said Shreve, and which was, as I then believed, and do now believe, drawn, planned, and invented by said Shreve; and that he was the first person who ever spoke to me of a boat of the kind, or any machine having any resemblance to the said snag-boat. Nor did I ever hear any other individual claim to be the inventor of said boat, and the arrangement of her machinery, which was new to myself, except the wheels and windlass, which were the same in plan and principle as those put up on the machine boats which we had built for said Shreve, in 1827, and which, as before stated, were believed to be planned and invented by said Shreve. I can further state that, from the best information I then obtained, and which I now believe to have been true, the snag-boat Heliopolis, which was the first steam snag-boat ever built, was in all particulars as efficient a machine for removing the snags from the Mississippi and other rivers as any boat that has been since built. I also affirm that we, Tellon & Himes, did build the first snag-boat "Heliopolis," and the first "Archimedes," and the second "Heliopolis," under contracts with Captain Henry M. Shreve, and that I did build the snag-boat "Sevier," under contract with Captain John W. Russell, and the "Hercules" snag-boat, under contract with Colonel S. H. Long; and the snag-boat "Samson" was built by Mr. John Evans, whose yard is close to mine; and I do hereby state that I know of no improvement that has been made in the working parts or power of the snag-boats built since Captain Shreve had the direction of them; nor do the last three boats built at New Albany differ in any material part from the three built at the same place, under the direction of said Shreve, except in the rooms on deck for the more commodious accommodation of the officers of said boats. But in the working parts of said boats, there has been no alteration or improvement. I also know the light-draft snag-boats "Gopher" and "Dragon" built at New Albany. They were similar in most of their working parts, to the single hull snag-boat "Eradicator," built by myself, under contract for Captain Shreve, on his plan, and under his personal superintendence; and intended expressly, as I then understood, for the removal of the Red river raft. The derricks on those two light-draft snag-boats were also rigged up in a similar manner, and rigged with tackle on the same plan and principle as the derricks and tackle used by Captain Shreve, on the steamboats Java, Souvenir, Pearl, &c., and which boats were used by said Shreve, under the command, from time to time, of Captains Henry Lee, Israel S. Moorhead, John K. Dillingham, Abram Tyson, John C. Carter, Jacob Hinckley, Thomas Riddle,

&c., in the removal of the red river raft, and were refitted and repaired from time to time, while that work was in progress, at my boat yard, in New Albany, Indiana. From all these circumstances, I do not consider that much credit is due to either Captains Abram Tyson, John W. Russell, or John K. Dillingham for the new invention of the snag-boats Gopher or Dragon.

PETER TELLON.

STATE OF INDIANA, *Floyd County, sct:*

Peter Tellon makes oath and says, that the matters and things set forth in the foregoing instrument of writing, as far as of his own personal knowledge, are true, as therein stated, and as far as from the information from others, he believes them to be true.

PETER TELLON.

Subscribed and sworn to before me this 28th day of December, 1849.

JARED C. JOCELYN, *J. P.* [L. S.]

STATE OF INDIANA, *Floyd County, ss:*

I, Isaac N. Akin, clerk of the Floyd circuit court, certify that Jared C. Jocelyn, whose genuine signature is attached to the foregoing affidavit of Peter Tellon, is, and was at the time of signing the same, an acting justice of the peace in and for said county, commissioned and sworn according to law, and by law empowered to administer oaths.

Witness my hand and the seal of the said court hereto affixed, at [L. S.] the city of New Albany, this 28th day of December, 1849.

ISAAC N. AKIN, *Clerk.*

No. 37.

Extract of a letter from Captain A. H. Bowman, of the United States corps of engineers, dated at

SULLIVAN'S ISLAND, (Charleston,) *November* 26, 1841.

"It will afford me great satisfaction to aid a very worthy man to procure from his country the just reward of his labor and talents. I regard his snag-boat as having contributed *immensely* to facilitate the navigation of the Mississippi, Arkansas, and Red rivers. Indeed, I do not think *without it that those rivers could have been cleared of snags, rafts, &c.*, IN A CENTURY."

No. 38.

Extract from the annual report of Secretary of War, from Document No. 2, *of session of* 1840–'41, *page* 24.

"It is to be regretted that Congress neglected at its last session to appropriate the small amount asked for clearing away the timber lately accumulated at the Red river raft, which obstructs the naviga-

tion of that stream. The expenditure necessary for this purpose is perfectly legitimate, as all the necessary supplies for the troops stationed at fort Towson are transported up this river; and the measure is recommend by its economy, *the additional cost* of transportation by land, for *one year*, when this navigation is obstructed, being *greater than the amount* required to defray the necessary expense of removing the drift timber."

Extract from the annual report of the engineer department, at session of 1839–'40, from Executive Documents, No. 2, page 170, showing what was "the amount asked for," as above stated. "As exhibiting clearly the probable nature of future works, their objects, and the vast amount of interests connected therewith, reference is again made to the report of the superintendent, whose project of improvement has the approbation of this department." Extract of estimate, page 210.

"Estimate of funds required for the improvement of the navigation of Red river, during the year 1840.....$85,000 00

A bill appropriating $85,000, passed the Senate in 1839–'40, but want of time prevented its passage by the House. Thus the above shows that more than $85,000 is saved yearly, viz: $100,000, by opening Red river.

No. 39.

To the honorable the Senate and House of Representatives of the United States of America in C ongress embled:

The memorial of Walker R. Carter, acting executor of the last will and testament of Captain Henry M. Shreve, deceased, late of the county of St. Louis and State of Missouri, respectfully represents: That his testator, the said Henry M. Shreve, departed this life at his residence in the State of Missouri, on the ——— day of ——— in the year of our Lord, one thousand eight hundred and fifty-one. Your memorialist further represents, that the said Shreve, at the time of his death, had a just claim against the government of the United States for their use for many years of the invention of the said Shreve, known as the "steam snag-boat" for removing obstructions in rivers, and for which he had obtained letters patent of the United States. Your memorialist, therefore, prays that the said claim may be investigated, and such sum may be allowed for the benefit of the widow and children of the said Shreve, for the past and future use of the said invention by the United States, as may be just an dequitable. And your memorialist, as in duty bound, will ever pray, &c.

WALKER R. CARTER, *Executor.*
By his Attorney.

No. 40.

27TH CONGRESS—2D SESSION.

CONGRESS OF THE U. S.—IN THE HOUSE OF REPRESENTATIVES,
December 23, 1841.

Mr. Cross presented a memorial of Captain Henry M. Shreve, praying remuneration for the past use of his patent for snag-boat, used by the government in removing obstructions to the navigation of sundry rivers; also, the purchase thereof for the future use of the United States; and also praying compensation for constructing certain public improvements—removing the raft in Red river, and removing obstructions in the Cumberland and Missouri rivers; which memorial was referred to a select committee.

Mr. Cross, Mr. Gentry, Mr. Sprigg, Mr. Miller, and Mr. Gwinn were appointed the said committee.

Attest: M. ST. CLAIR CLARKE *Clerk.*

No. 41.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of the undersigned most respectfully represents to your honorable body that the surplus produce of the great valley of the Mississippi seeking a market by the western rivers, was depressed in value in consequence of the obstructions to navigation, caused by snags, sawyers, and planters, which produced annually immense losses of property and alarming sacrifices of human life; that by the skill, energy, and toil of Captain Henry M. Shreve the snag-boat was invented and put into operation, (for which boat we understand he holds a patent,) by which vast obstructions were removed that could not have been otherwise overcome; that great improvement was made in the navigation of the Mississippi, Ohio, Missouri, Arkansas, and Red rivers, whereby millions were annually saved to the country, which would have been lost had not the improvement been made.

In proof of the great value and of the indispensable necessity which existed for the agency of such a machine as the snag-boat, as well as to indicate the immense improvements which may yet be made by the use of such boats in all our western rivers, your petitioners beg leave to refer your honorable body to the reports of committees of Congress in the years 1834 and 1836, and to the reports of distinguished officers of the corps of engineers, viz: Major Delafield, Captain A. H. Bowman, and Captain R. E. Lee, and of Colonel Long, of the topographical engineers, which reports are to be found in the executive documents communicated to your honorable body.

Your petitioners beg leave further to represent that, by the improvement of the Mississippi from the mouth of the Ohio to New Orleans, and the removal of the great Red river raft, the value of the public lands has been enhanced many millions of dollars, especially on Red river, where an extensive body of the best cotton lands in the Union, previously uninhabited, and inundated to an extent which ren-

dered a survey of them impracticable, has been made highly valuable. The raft choked up the river for one hundred and sixty-five miles, and necessarily rendered the lands on either side and above valueless, but since the removal of that formidable obstruction those lands have been surveyed and sold, and are now mostly in a high state of cultivation as cotton plantations.

Your petitioners would also respectfully represent that they deem it expedient that the government should pay Capt. H. M. Shreve a fair and liberal price for his patent right for the snag-boat, the value of which they will not undertake to fix; but, reverting to the great benefit the country has derived from it, and to essential improvements in which it must hereafter be used, they believe it due to the west and to Captain Shreve that the invention should become public property.

Your petitioners further represent that, in justice to this portion of the confederacy and its rapidly increasing commerce, ample appropriations should be made without delay to enable the proper department of the government to cause operations to be commenced with the snag-boats in the Mississippi from the mouth of the Missouri to New Orleans, and in the Missouri and Arkansas rivers, where the accumulation of snags since the snag-boats have been lying idle for want of means to work them, has been so great as to cause the loss of boats and cargoes worth many hundred thousand dollars. Immediate operations are especially necessary on the Mississippi between St. Louis and the mouth of the Ohio, where the snag-boats have done nothing during the last four years for want of the necessary appropriations. The losses on this part of the Mississippi alone in the last twelve months amount to more than six hundred thousand dollars, nearly all of which would have been saved by sufficient appropriations to keep the work of improving the navigation of our rivers in progress. While the government is expending millions annually to facilitate and protect the commerce of our Atlantic brethren, foreign and coastwise, we trust your honorable body will perceive the propriety and justice of appropriating a few hundred thousand dollars per year to facilitate and render safe the more extensive and important inland commerce carried on by means of steamboats on our great interior rivers.

St. Louis, *January* 5, 1842.

J. O. Fallon.
N. Ranney.
Ez. A. Tracey.
Kermett, White, & Co.
James Jeffrey.
Samuel S. Rayhern.
Spraule & Keys.
Rowan & Brown.
Thomas H. Griffith.
James Griffith.
J. R. Sinister.
Finney Lee & Co.
John O. Agnew.
S. Russell.
L. E. Canless.
John B. King.
J. V. Prather.
John Kelley.
A. W. Manning.
Benj. F. McKenney.
Louis T. Labaume.
Jas. H. Marshall.
Galvez & Baldor.
Ls. Jaccard.
Eugine Jaccard.
Cornelius L. Sullivan.
James Shea.
Wm. Yule.
R. W. Dubois.
G. S. Bailey.

F. Lapere.
J. B. Calts.
Robert A. Darst.
A. R. Chouteau.
J. & F. W. Thompson.
E. Martin.
Wm. P. Cowles.
Smith, Brothers & Co.
Charles Semple.
Edmund Chadwick.
John Cochrane.
Simonds & N. Cowison.
A. G. Edwards & Co.
Gore & Ridgway.
Blaine, Tompkins & Barrett.
John Garnett.
Wm. T. Balls, jr.
John L. H. Smith.
McGrogan & Strenchens.
Thomas F. Anderson.
Clerk S. Boat & Osprey.
A. G. Jamison.
S. H. Loring.
Kings & Fisher.
J. R. Stanford.
Charles E. Allen.
Isaac S. Allen.
Valentine & Ames.
Edgar Ames.
T. M. Parker, pilot.
James Y. Sargent.
Francis H. Fairman.
Anderson & Morgan.
W. R. Clarke.
E. Woodward.
N. Clarke.
J. Y. Burdeau.
Stephen Price.
John S. Clark.
Henry J. Loring.
Samuel Nourse.
Calvin C. Wick.
Wm. F. Enders.
Nathan D. Allen.
V. Staley.
C. H. Jett.
John G. Webb.
John Frynd.
Jos. Phillips.
Mason Johnson.
J. Phillips Steriger.
W. H. Aikes.
Geo. W. Dorr.
John Canull.
H. C. Russell.
David Somerville.
Joseph Klein, jr.
N. Childs, jr.
Isaac Phelon.
James Magehan.
John B. Gibson.
John McCutchon.
R. P. Clarke.
L. M. G. Noyes.
Canters & Schulze.
George Engleman.
Anglewood S. Eggers & Barst.
S. Eggers.
J. O. Illingworth.
Wm. H. Evans.
H. Martin.
W. A. Dietz.
A. Krautler.
Albert Billings.
C. J. Carpenter.
Henry Bumpff.
B. Shiel Dodd.
John F. Bagley.
Martin Taylor.
Loomis Curtis.
J. R. Hammond.
Joseph Childs.
Isaac Y. Greene.
James Kennedy.
Adolphe Benarde.
Luke Fleming.
Alex. L. Kennedy.
John C. Elder.
Isaac B. Thomas.
Kingsland & Lightner.
Hull & Cozzens.
Th. S. White.
John Bryan.
George Robinson.
A. C. Thorp.
R. L. Higgins.
A. D. Higgins.
L. Edwards.
Dr. Alex. Marshall.
H. W. Williams.
Alcorn Forsyth.
John B. Cuniffe.

Ph. Rogers, M. D.
Wm. T. Corsons.
Wm. A. Sands.
Robert Dorey.
A. S. Goodyear.
D. Cram.
S. D. Dodge.
John Johnston.
Caleb Furnese.
M. B. Greene.
John Klein.
P. G. Sandberry.
H. H. Kasin.
J. S. Hatherington.
John D. Randall.
E. M. Buckingham.
John P. Turner.
Thos. T. McDoogan.
J. D. Colver & Co.
John D. McMurray.
James Clark.
Joseph Foster.
Dennis Sheehan.
F. I. Steigers.
Henry S. Wells.
G. A. Lindley.
Pope & West.
Matthew Hogan & Co.
J. & E. Huert.
P. M. Dillon.
H. N. Davis & Co.
Stettinus & January.
L. & A. G. Farwell & Co.
Charles D. Gillespie.
A. McKinley.
C. C. Coley.
Samuel H. Peake.
Jos. Wm. Russell.
Jeremiah Langton.
Edward Hutawa.
E. Sisson.
G. L. Stansbury.
Ambrose D. Jacobs.
John Davis.
J. S. Mussy.
R. H. McGill.
Jas. H. Millbourne.
A. Robertson.
John Beakey.
D. F. Donaldson.
Charles C. Morris.
James A. O'Neill.
Samuel S. Laws.
John H. Hall.
G. Bremerman.
E. Baisselier.
F. H. Meus.
John O. Rough.
D. Massed, jr.
A. Gaugher.
Geo. W. Coons.
William Roche.
Starnes & Springer.
John H. Corl.
William C. Ruby.
Raborg & Shaffner.
Greeley & Gale.
Colburn & Coolidge.
W. A. Fairman.
Robert A. Barnes.
Thomas J. Dix.
Jules Labaune.
H. L. Bacon.
L. Bradley.
E. C. Carlton.
Bertold, Yesson & Co.
Anderson Thompson.
W. Banks.
Von Phul McGill.
James L. Waters.
A. Huntsberry.
W. K. Rule.
William Ray.
F. Sisson, jr.
W. S. Allen.
N. W. Parker.
Captain Osprey.
N. H. Cox.
Gurley, Keith & Ray.
Edward Warner.
A. Marks.
Thos. H. Larkin.
J. B. Wall.
Jannett & Ferguson.
J. H. Chambers.
F. W. Risque.
T. F. Risk.
Roberdeau Annan.
Archibald Carr.
B. S. Hollingsworth.
John E. D. Cairns.
D. D. Davis.

Abraham Oyster.
Jos. Sale.
James Wilson.
Thomas Magee.
R. Dowling.
Henry Linhoff.
Ham. Kuhliakumseff.
B. W. Ayres.
Frs. Kreichman.
Henry D. Evans.
Abel Rathbone Corbin.
T. Polk.
N. E. Janney.
George Brents.
Theodore P. Green.
Wm. Campbell.
Henry L. Clust.
Isaac Brinker.
L. T. Woolfolk.
Jas. C. Louderman.
Wm. Booth.
Kennedy Street.
August Guilberth.
Austin Piggott.
Myron Titus.
Wm. Jas. Austin.
D. Rokohl.
Owen Webb.
A. V. Sabrinez.
J. M. Moore.
R. H. Gould.
Wm. Chambers.
T. Beverley.
Ira Todds & Sons.
S. W. Horton.
John Gerding.
W. H. Boyce.
Isaac D. Fulken & Son.
Thomas M. Howell.
Jos. C. Brown.
Jenifer T. Sprigg.
Wm. Palm.
G. Gahan.
Richard H. Pitts.
B. S. Garland.
A. B. Garland.
Samuel Thomas.
Joseph Stone.
Wilkinson Byran.
D. H. Parker.
Charles G. Olbon.
Geo. Dewitt.
John Schiffler.
V. H. Higgins.
J. H. Siddons.
D. Francis.
J. W. Beachboard.
Lawrence Hoyle.
Hugh Rose.
J. T. Beachboard.
Wm. Piggott.
John H. Adams.
Wm. B. More.
Thomas Asphirg.
Levi Block.
James Murphy.
Abm. M. Swart.
S. H. Doty.
J. L. Taylor.
Edward Ford.
Robert Robertson.
Henry Wilcocks.
Benjamin L. Shaw.
Wm. Woods.
Geo. Bulsher.
James Parker.
Joseph Woodman.
Samuel Turne.
Samuel Merry.
John Gnomman.
Wm. J. Gambel.
W. G. Wells.
D. B. Hill.
John Withnell.
F. M. Jenkins.

No. 42.

Extract from an act approved July 3, 1852.

"For improving the navigation of the Arkansas river, fifteen thousand dollars; provided, the Engineer department, after due examination, are satisfied that, during a portion of the ensuing year, the

men and machine now employed in removing obstructions in the Ohio and Mississippi rivers, can be more usefully employed in removing those of the Arkansas river; provided, that the compensation of the superintendent of the Ohio and Mississippi rivers, shall be the sum of three thousand dollars per annum, in full for all his services; and he shall not hereafter be allowed anything in the shape of commissions in his disbursements."

Since the date of the above act, the extremely arduous and difficult work of the removal of the Great raft in Red river, and the removal of obstructions in the Missouri river, and the removal of obstructions in the Cumberland river, have been placed upon him, (Captain Henry M. Shreve,) imposing necessary additional expenses upon him amounting to at least $800 per annum; these additional expenses reduced his remuneration down from $3,000, what the law gave him for attending to certain specified works, to $2,200, when at least *three times* the labor was placed upon him. No civil engineer would have undertaken the removal of the Red river raft alone for less than $6,000 per year. Every consideration of the barest justice entitle him to $3,000 per year additional to that mentioned in the above act for specified services.

No. 43.

OHIO RIVER.

Extract from Executive documents No. 74, of 21st Cong. 2d session 1830–'31, Volume 3.

"By the completion of the proposed improvements, steamboats of medium size will be enabled to run five months in each year longer than they now do, viz: July, August, September, October, and November. In those months there are about 500 flat-bottom and keel boats passed down the river, carrying an average of sixty tons of freight, amounting together to 30,000 tons, at $15 per ton, the average price paid for freight carried by them at low water, in all $450,000; in the same time at least 10,000 tons of freight are transported up the river for New Orleans, St. Louis, &c., at the rate of $20 a ton freight, making $200,000; to which add about 8,000 passengers that pass up and down the river, at an average of $20 each, $160,000, producing an aggregate of $810,000.

"If the navigation can be so improved as to admit of steamboats drawing four feet of water to run, transportation can and will be afforded at the same rate of freight and passage that is now paid when the river is high, which does not amount to more than one-half the amount paid in low water. This will produce a saving to the commercial and travelling interests of the country of $465,000. Add to this amount losses sustained by the boats stove and lost on the obstructions in the bed of the river, and you find a clear saving at least of *half a million of dollars.*

"Then carry the same calculation from Louisville to Pittsburg, and we find that the advantages to be derived from the contemplated improvement amount to a sum not less than $1,250,000 *in a single year.*

"By those unacquainted with the commerce and navigation of the Ohio river, the foregoing calculations may be thought to be extravagant; they have been made from personal observation, and a strict examination of the subject, and will doubtless be found to be below what will be the result, if tested by actual experience."

Equal or greater results to the above described have followed the removal of obstructions of the Mississippi, Arkansas, Red, Cumberland, and Missouri rivers, by the snag-boat making $6,250,000 "in a single year," and equally splendid results will follow the removal of the obstructions in many other rivers by it, as see the following:

Extract from the inspection report of Captain R. E. Lee, of the Corps of Engineers, to the United States Engineer department, from Executive documents No. 2 of session of 1840–'41, *page* 123, *dated Mississippi river, November* 20, 1839.

"Nothing can more strongly show the benefits that have been produced by the operations of Captain Shreve, than a comparison between the present state of the river and its condition ten years ago. These advantages are not confined to the navigation by steamboats, but are enjoyed in an equal degree by the great trade carried on in flat-boats, in which so large a part of the produce of the upper country descends the river. I am informed by some of the oldest boatmen that the river was never so clear of snags as at present; and, indeed, the few that remain scattered over its great length can hardly be said to offer any obstruction. The whole number that have been removed the past year amounts to 5,056; and the number of trees felled from the falling banks, to 1,103. Of these, 4,097 snags and 967 trees have been taken from the Mississippi, and 959 snags and 136 trees from the Ohio."

No. 44.

ST. LOUIS, *January* 11, 1842.

SIR: Your letter of yesterday's date has been received, by which you request me to state to you my opinion of the present condition of the navigation of the Mississippi river, compared with what it was previous to the operation of the snag-boats on it; the usefulness of that important machine, the necessity for its use hereafter on the western rivers, the value of the patent to the United States for the services already rendered and for eleven years yet to come.

In reply I have to state that I was familiarly acquainted with the Mississippi river for several years previous to the invention of the snag-boat, and have witnessed the progress of the great and important improvement made in that river by the operations of the snag-boat, the benefits of which are of so much importance that it is difficult to

estimate the value of them. The Mississippi river, that was formerly a forest of snags, is now comparatively free from that dangerous obstruction, requiring but little more hereafter than to keep down the annual accumulation.

The effect produced on the navigation by the removal of the snags, has been of vast importance to the navigation in many respects; it has almost done away with the risk of snags, and has evidently been the means of shortening the passage of steamboats on the Mississippi about one-half. For example, the boats that now run from New Orleans to St. Louis and Louisville in six to seven days, could certainly not have made the passage before the snag-boats removed the obstructions, in less than twelve to fifteen days, if indeed they could have got up at all, at the speed they now run; for the snags were then so numerous that it was impracticable for any boat to make a passage without striking snags frequently, which must have been fatal to them at the high speed that they now run at.

As to the value and usefulness of the snag-boats, I unhesitatingly state that it is my decided opinion that the improvement which has been made by them could not have been effected without their agency, and that they are absolutely necessary for the use of the United States for many years yet to come.

I am also of the opinion that the government is indebted to you in a large sum for the patent right of the snag-boats, and that it will be good policy for the United States to pay a liberal compensation for your patent, and make it public property. As to the value of the patent, I could not estimate it at less than one hundred thousand dollars, as it has evidently been the means of saving many millions of dollars of property to the citizens of the United States, and many lives that must have been lost, had not that invention been put in operation; besides it is a machine of such vast importance to the great western rivers, that it cannot be dispensed with, as it is necessary to continue its operation in all our great rivers for many years to come.

Another view of the great value of the snag-boats, is the immense amount their operations have added to the value of the public lands on all the western rivers where they have been worked, particularly on the Red river, where many hundred thousand acres have been made valuable that would otherwise have been worth nothing.

You are at liberty to use this communication in such manner as you may think proper.

I am, sir, very respectfully, your obedient servant,

JOHN W. RUSSELL.

Capt. HENRY M. SHREVE, *St. Louis, Mo.*

No. 45.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled: Your memorialists, the General Assembly of Arkansas Territory, would respectfully state that a distinguished officer in the Engineer department of the United

States, Captain Henry M. Shreve, has petitioned of your honorable body the right to enter six sections of land at government price in the Great raft on Red river, now inundated by water, that may be reclaimed hereafter by his labor. Your memorialists, impelled by a sense of the high obligation due this distinguished officer for the many inestimable services he has already rendered this Territory in removing the obstructions in its rivers, and those we expect to receive, would respectfully ask your honorable body to take into consideration his petition, and would urge in behalf of his claim, if individual services, and the invention of useful machinery should ever entitle one to call on the munificence of his country, Captain Shreve assuredly deserves this privilege. Your memorialists are perfectly apprized that this government has always deprecated the principle of bestowing gifts on its public officers; but your memorialists conceive this to be an extraordinary exception to the general rule, and could say, without the fear of contradiction, that the many obstacles which present themselves to the safe navigation of the Mississippi river, and which once proved so destructive both to human life and property, by the ingenuity of this individual have been entirely removed, and the wealth and commerce of five millions of people now proudly floats with safety and ease upon its expanded bosom. Your memorialists would further say, that the petition in question does not ask for a donation of land, but a mere right to enter six sections of land at government price, which may be reclaimed by the labor of the petitioner, which land is now, and ever would remain useless to the government, if it was not for the enterprise and ingenuity of this individual. An undertaking once thought to be the mere idle speculation of the theorist, we now see in a state of completion under the superintendence of your petitioner, a consummation of which will throw thousands of dollars into the treasury of the Union. A petition like this, so deeply founded in justice, and so reasonable in its request, induces your memorialists, as in duty bound, ever to pray.

JOHN WILSON,
Speaker of the House of Representatives.
CHARLES CALDWELL,
President of the Legislative Council.

Approved October, 24, 1835.

WM. S. FULTON.

This is a copy of a memorial of the General Assembly of Arkansas, presented to the House of Representatives of the United States, December, 16, 1835, and now on file in the office of that House.

S. BURCHE,
Chief Clerk of the House of Representatives.

No. 46.

PATENT OFFICE, *February* 15, 1843.

SIR: Your note requesting a copy of Mr. Shreve's patent is received this a. m.

I have ordered the patent and specification to be commenced to-day. The drawings are in three large sheets, and complicated. It will require several days to copy the drawings, and the expense will be $20. I would remark, we have a beautiful model which the committee could see, and I will attend at the office any time during daylight to accommodate them if they will designate the hour.

And I beg to be informed whether the committee would require the drawings.

I am most respectfully,

H. L. ELLSWORTH,

Hon. EDWARD CROSS, *House of Representatives.*

No. 47.

A BILL to secure to the United States the right to use Captain H. M. Shreve's snag-boat in the public works.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be required to ascertain by the best evidence the nature of the case admits of, the actual saving to the government arising from the use of Captain H. M. Shreve's snag-boat, in the improvement of the western rivers, from its first introduction to the first day of September, 1843, and, when so ascertained to pay out of any money in the treasury not otherwise appropriated, one-half part of the amount to said Shreve, on condition that he shall convey to the United States the right to use the said snag-boat, and shall sign an acquittance of all claim against the United States for the past use of the same.

No. 48.

WAR DEPARTMENT, *February* 8, 1843.

GENTLEMEN: I transmit herewith a report of the colonel of the corps of topographical engineers, containing a copy of the letter referred to in your communication of the 3d instant.

Very respectfully, your obedient servant,

J. C. SPENCER.

Hon. E. CROSS, and P. TRIPLETT,
House of Representatives.

No. 49.

WASHINGTON CITY, *January* 28, 1839.

GENTLEMEN: Permit me to say I view my claim for compensation for the invention of the steam snag-boat, as one of a peculiar nature. The boat and machinery connected with it, constitutes a most powerful and valuable agent in the removal of obstructions to the navigation of the great rivers of the west, and must continue to be highly beneficial to the government and country. It embraces a combination of mechanical powers which can only be advantageously exerted in effecting such works of improvement as must necessarily be prosecuted at the public expense, and under the authority of the general government and for this plain reason; my patent can be in nowise serviceable to me, unless I receive from the government an equivalent for the right to use the machine.

My attention was drawn to the invention of the snag-boat by an advertisement issued by order of the Secretary of War in 1824, from which period, until 1828, the energies of my mind and a large portion of my time were devoted to the combination of the powers of the lever, windlass, and tackle, in a single machine, to be worked by steam power, and to the projection of a twin-boat, adapted to the reception of the machinery and to the service in which it was to be employed by the government.

In the summer of 1828, the government having been put in possession of the nature of my invention, directed me to construct the snag-boat Heliopolis, which was put in operation on the 19th of August, 1829. The Archimedes was built in 1831, on the same plan and principles, and both of them have been examined by competent machinists and navigators, who have united in pronouncing the snag-boat a splendid machine, and have been unable to suggest an improvement on the original model. It was invented for the government, and is only adapted to the effectuation of such works as must necessarily be accomplished by the government Of its present and future value, it may be difficult to form an accurate estimate; but I may be permitted to remark, that by its agency improvements have been made in the Mississippi, Ohio, Cumberland, Arkansas, and Red rivers, for a few hundred thousand dollars, which would have required the disbursement of as many millions without it. In 1830, the snag-boat was examined by Captain Delafield, of the United States engineers, who said in his report to the chief engineer: "The difficulties in the navigation of the Mississippi consist in the numerous snags that are found in the track of the steamboats and flat-boats, on the whole length of the river, and so numerous that no pilot can bear in mind their location. To remove them, the present superintendent has contrived and put in operation a steamboat which answers the purpose admirably well."

In another part of the same report, Captain Delafield speaks of the snag-boat as a splendid piece of machinery. The power of which is such as to raise the largest and most firmly planted snag in the river; and he adds "that one of those raised while he was on board con-

tained one thousand and six hundred cubic feet of timber after separating the root from it, and could not have weighed less than sixty tons."

In his report of 1832, Captain Delafield says: "On the Mississippi river, a continuation of the plans and operations of last season has been productive of marked improvement, by lessening the risk of navigation by reducing the number of snags and sawyers. The two steamers constructed expressly for the purpose of removing snags, &c., from the channel (a description of which was given in my report of 1830,) during the season of low water has been working, one above the mouth of the Ohio, and the other below."

I also beg leave to refer the committee to the several reports of Captain A. H. Bowman, of the engineers, on the subject of the snag-boat and effects produced by its operation, all of which will be found in the annual report of the chief engineer, accompanying the President's annual message to Congress. These extracts and the reports of Captain Bowman will demonstrate to the committee that the snag-boat was invented for the express purpose of improving the navigation of our great rivers; that it is a splendid piece of machinery; has been advantageously employed, and may be pronounced necessary to the future operations of the government.

You will also permit me to state that favorable reports have been made by committees of the House of Representatives in 1834–'36, a copy of the report of 1834, is herewith enclosed.

The fact that I have abstained from soliciting the government to possess itself of the right to use this invention, until it had been tested by the operations of five years, must create at least a strong presumption that I have had no desire to receive for it more than a fair compensation.

With great respect, your obedient servant,

HENRY M. SHREVE.

Hon. Messrs. FLETCHER, PHELPS, MENEFEE, BEERS, and ROBINSON,
Committee on Patents, House of Representatives.

No. 50.

WAR DEPARTMENT, *February* 19, 1839.

SIR: I have the honor to transmit you a report of the chief engineer, in answer to the interrogations propounded in your letter of the 6th instant, relative to the purchase by the government of the right to use Shreve's invention of the snag-boat.

Very respectfully, your most obedient servant,

J. R. POINSET.

Hon. J. FLETCHER,
Chairman of the Committee on Patents, H. R.

No. 51.

WASHINGTON, *March* 6, 1847.

Received of the clerk of the House of Representatives, the patent of Henry M. Shreve, filed in his case for payment for the snag-boat.

HENRY M. SHREVE,
By F. W. RISQUE, *his attorney.*

No. 52.

THE STATE OF MISSOURI, *County of St. Louis, ss*:

To all persons to whom these presents shall come, greeting: Know ye, that the last will and testament of Henry M. Shreve, deceased, hath, in due form of law, been exhibited, proved, and recorded in the office of the judge of the probate court for St. Louis county, a copy of which is hereunto annexed, and inasmuch as it appears that Walker R. Carter, and Lydia R. Shreve, have been appointed executors in and by the said will and testament to execute the same; and the said Lydia R. Shreve having declined taking upon herself the burden of executrix, as aforesaid, these letters testamentary on the estate of said Henry M. Shreve, deceased, are granted to Walker R. Carter, the executor in said will named: and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize him, the said Walker R. Carter, as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Henry M. Shreve at the time of his death, in whosever hands or possession the same may be found, and to perform and fulfil all such duties as may be enjoined on him by said will, so far as there shall be property, and the law charges him and in general to do and perform all other acts which are or hereafter may be required of him by law.

In testimony whereof, I, Peter Ferguson, judge of the probate court, in and for the county of St. Louis, hereto sign my name and affix [L. S.] the seal of said court, at office, this third day of April, A. D. 1851.

PETER FERGUSON,
Judge of Probate.

I, Peter Ferguson, judge of the probate court for the county of St. Louis, certify that the foregoing letters testamentary, on the estate of Henry M. Shreve, deceased, are truly recorded in my office, this third day of April, 1851.

PETER FERGUSON,
Judge of Probate.

In the name of God, amen. I, Henry M. Shreve, of the county of St. Louis, and State of Missouri, being of sound and disposing mind, and considering the certainty of death, and the uncertainty of the

time thereof, and anxious to make a suitable disposition of all my real and personal estate, to the end that I may be prepared to leave this world when it shall please God to call me hence, do make, ordain, and publish this my last will and testament; hereby revoking and making null and void all other wills and testaments by me heretofore made.

ART. 1. It is my will that all of my just debts and funeral expenses be paid and discharged by my executor and executrix, hereinafter named and appointed, and the survivor of them, or their successor, out of the following effects: Assets, claims, demands, stocks, and shares in any company or associations, and debts due me by bonds, notes, leases, or open accounts; and, also, out of the personal and real estate in this article named, to wit: My right and interest in and to the property, rights, and credits belonging to the late co-partnership, doing business in the city and county of St. Louis, and State of Missouri, under the name and style of Vairin & Reel; also, the proceeds of the sale of my stocks and shares in any company or association; also, all moneys to be collected, or which may be collected, from the debts and demands due to me on open account, bonds, bills, and notes, leases and rents; and also, out of any of my real estate, within the corporate limits of said city of St. Louis, which may be deemed by my said executor and executrix, and the survivor of them, or their successor, necessary to pay that portion or residue of my debts which may, at the expiration of one year after my decease, be unpaid out of all my personal property, rights, and interests aforesaid. And it is my will that all of the said property, rights, and interest, except my real estate within the corporate limits of said city of St. Louis, shall, so far as the laws shall be made available therefor within one year after my decease, be first applied to the payment of my debts and funeral expenses, and that the residue only of my said debts shall be paid and discharged out of my said real estate. And to the end, that my just debts may be properly paid, as herein before mentioned, I do hereby authorize and empower my said executor and executrix, or either of them, with the consent of the other, and the survivor of them, or their successor, to do all and singular that may seem to them fit and proper to be done in the premises in recovering or compromising, if advisable to do so, any and all of my said claims, demands, and debts due to me, and in recovering all my right and interest in and to the property, rights, and credits belonging to said Vairin & Reel; and in selling or disposing of my said stocks and shares, and to sell and convey, at the expiration of one year after my decease, from time to time, and for such prices as they, or the survivor of them, or their successor, shall deem proper, in fee simple, or any less estate, or to mortgage any part of my said real estate herein charged with the payment of my debts. And I do further authorize and empower my said executor and executrix, or either of them, with the consent of the other, and the survivor of them, or their successor, to make, execute, and deliver all proper deeds, writings, or other instruments, under seal or otherwise, and all receipts and acquittances in this behalf, which deeds, writings, and other instruments, receipts, and acquittances, I do will and declare, shall exempt the person to whom the same shall be executed and

delivered from being answerable for the mis-application or non-application, or being concerned to see the application, of any money paid to my said executor and executrix, or either of them, with the consent of the other, and the survivor of them, or their successor; and it is my will that if, after the payment of my just debts, as aforesaid, there shall remain any part of the personal property, rights, and interest, in this article herein before mentioned, or the proceeds thereof, then and in that event, my said executor and executrix, and the survivor of them, or their successor, shall pay over, transfer, and convey the same, in equal parts, to my daughter Rebecca A. Carter and my granddaughter Harriet V. Reel; and the receipts of my said daughter and granddaughter, or either of them, shall be a full acquittance and discharge of my said executor and executrix, and the survivor of them, or their successor, from all the trusts in this article mentioned, so far as the same are for the benefit of the receiptor.

ART. 2. After the payments of my just debts, as aforesaid, I give, grant, and devise, in equal parts, to my daughter, Rebecca A. Carter and my granddaughter Harriet V. Reel, and their heirs and assigns forever, all my real estate, within the corporate limits of the said city of St. Louis.

ART. 3. I give and grant to my grandson Henry Shreve Carter, and to his heirs and assigns forever, my two negro boys, named Jake and Jim, servants for life, together with all the wearing apparel they may have at the time of my decease. I also give, grant, and devise to my said grandson Henry Shreve Carter, and to his heirs and assigns forever, fifty acres of land, bounded as follows: Commencing at the northwestern corner of a tract of land of eighty-four and thirty-four hundredths (84.34) arpens, acquired by me from Edward Tracy and wife, by deed bearing date September 1, A. D. 1836, and signed by said Edward Tracy, Mary Ann Tracy, and Sophia C. Collett, and recorded in the recorder's office of the county of St. Louis, in book Y, on pages 163 and 164; the said tract herein referred to being the second tract named and described in said deed; thence, in a southwardly direction, along the western boundary of said tract and of the tract adjoining the same on the south, to the southwestern corner of said last named tract—the said last named tract being the same, containing fifty-four (54) arpens, more or less, acquired by me by the same deed before mentioned in this article, and being also the third tract named and described in the said deed; thence along the southward boundary of said last tract to a point where a line run from thence northwardly, and parallel with the westward boundaries of said two tracts to the point where said line would intercept the northward boundary of the first of said tracts, will make the whole quantity of land lying west of said last named line, and cut off from said two tracts, fifty acres; thence, along the northward boundary of said first named tract, to the place of beginning: the said fifty acres hereby given, granted, and devised by me, being the part above described, of the farm known as Gallatin place, on which I now live, in St. Louis township, in the state of Missouri. And I do hereby will and declare that said fifty acres of land shall remain, as now, attached to and a part of my said farm, until the ninth day of April, A. D. 1854, and

the use, rents and profits thereof, until the said ninth day of April, A. D. 1854, shall be for the sole benefit and behoof of my wife, Lydia R. Shreve, to be by her applied to the maintenance and support of herself and my two daughters, Mary Shreve and Florence Shreve. And I do hereby further will and declare, that until the said ninth day of April, A. D. 1854, my said wife Lydia R. Shreve shall have full power to cultivate said fifty acres, as a part of my said farm, for the purposes herein mentioned; provided, always, that in the event that my said wife Lydia R. Shreve shall die or marry before the said ninth day of April, A. D. 1854, all of her right, interest, and estate in, or enjoyment of, said fifty acres, shall cease and determine, and the use, rents, and profits of the said fifty acres shall be, until said ninth day of April, A. D. 1854, wholly applied to the support, maintenance, and education of my said two daughters, Mary Shreve and Florence Shreve; and provided, further, and I do hereby will and declare, that until said ninth day of April, A. D. 1854, my said grandson HenryS hreve Carter, shall, anything herein to the contrary notwithstanding, have full power, without let or hindrance, to improve said fifty acres of land, by planting trees upon and fencing the same, and by making any other permanent, valuable, or ornamental improvement thereon, which he may think for his interest to make. And I do hereby further will and declare, that on the said ninth day of April, 1854, my said grandson Henry Shreve Carter, or his heirs or assigns, may enter into possession, and full and exclusive enjoyment of said fifty acres of land, and the use, rents, and profits of the same.

ART. 4. I give, grant, and devise to my granddaughter Sally C. Carter, and to her heirs and assigns forever, my negro girl named Charlotte, aged about seven years, now in Louisville, Kentucky, a servant for life.

ART. 5. Igive and bequeath to my grandson Israel Shreve Carter, his heirs and assigns forever, my gold watch and chain.

ART. 6. I give and bequeath to my son-in-law, Walter R. Carter, all my right, title, and interest in and to a certain claim which I have upon the government of the United States, for the using and appropriating by it and for its benefit of my property in and right to the exclusive enjoyment of a certain invention of a steam snag-boat, patented to me by said government; which said claim and documents pertaining thereto are now under the charge and management of my agent, F. W. Risque, esq., of Washington city, in the District of Columbia: also all my right, title, and interest in and to the said patent, with full power and control over said claim and patent-right, for the prosecution of said claim to a final recovery; and for the disposal of my said patent-right, and for compromising said claim with the government of the United States; and on the recovery of said claim, or any part thereof, or upon the sale of my said patent-right, the said Walker R. Carter, after deducting and paying all costs and expenses attending the recovery and settlement of said claim, or sale of said patent, shall pay the net proceeds, in equal parts, share and share alike, to my wife Lydia R. Shreve, my daughter Rebecca A. Carter, my granddaughter Harriet V. Reel, my daughter Florence

Shreve, and my grandson Henry Shreve Carter, and my daughter Mary Shreve.

ART. 7. I give, grant, and devise to my two daughters, Mary Shreve and Florence Shreve, and if either of them shall die before she arrives at the age of twenty-one years without leaving lawful issue, to the survivor of them, my farm, on which I now live, known as Gallatin place, except the fifty acres hereinbefore devised by me to my grandson, Henry Shreve Carter, situate in the township of St. Louis and State of Missouri, the said farm now containing and including several tracts of land acquired by me of Edward Tracy and wife by deed, bearing date September 1, A. D. 1836, and signed by Edward Tracy, Mary Ann Tracy, and Sophia C. Collett, and recorded in the recorder's office aforesaid, in book Y, pages 163 and 164. Also, the tract of land acquired by me of John W. Reel and wife, by a deed bearing date August 24, A. D. 1837, and signed by John W. Reel and Eugenia Reel, and recorded in the recorder's office aforesaid, in book C, No. 2. page 137, being the same tract acquired by said John W. Reel from Frederick Hyatt, administrator of Henry E. Dever; also, the tract of land acquired by me of John O'Fallon and wife, by a deed bearing date September 17, 1838, and signed by John O'Fallon and Caroline O'Fallon, and recorded in the recorder's office aforesaid, in book K, No. 2, pages 334 and 335; the said farm hereby given, granted, and devised to my said two daughters, Mary and Florence, and if either shall die without leaving issue before she arrives at the age of twenty-one years, to the survivor of them, containing at this time, exclusive of the part hereinbefore devised to my grandson, Henry Shreve Carter, two hundred and ninety and thirty-eight one-hundredths ($290\frac{38}{100}$) acres, more or less; and, also, I give, grant and devise to my said two daughters, Mary and Florence, and if either of them shall die without leaving lawful issue before she arrives at the age of twenty-one years, to the survivor of them, my sixteen negro slaves, named as follows, to wit: Davy, Aggy, Lewis, Wallace, Adeline, William, Cordelia, Emily, Merriman, Mary, Charles, Harvey, Nancy, Phillis, Winny, and Bath, servants for life, and also all my household furniture, and all the horses, cattle, sheep, swine, and live stock of every kind whatsoever now on the said farm or attached and belonging thereto, as the same is now occupied, used, and enjoyed by me, and all my carriages and farming utensils, and all my personal property of every name and kind whatsoever now on said farm and belonging or attached thereto, as aforesaid. All said devises and bequests in this article named are subject to the following conditions, to wit: that my said wife, Lydia R. Shreve, shall have possession of said property, and hold the same, and enjoy the use, rents, and profits thereof during her natural life, or until she shall marry, or until either of my daughters, Mary and Florence, shall marry, or arrive at the age of twenty-one years; provided, however, that my said wife, Lydia R. Shreve, after taking from the use, rents, and profits thereof her own ample support and maintenance, shall support, maintain, and educate out of the residue of said rents and profits, if the same shall be sufficient therefor, my said two daughters, Mary and Florence, until they marry or arrive at

the age of twenty-one years; and I do hereby will and declare further, that when my said two daughters, Mary and Florence, or either of them, shall marry or arrive at the age of twenty-one years, or should both of my said daughters die without leaving lawful issue, provided my said wife, Lydia, shall not have previously married, then and in any of those events there shall be set apart to my said wife, out of said farm and other property in this article of this my last will hereinbefore named, so much thereof as that the use, rents, and profits thereof shall afford her ample support and maintenance during her natural life; and I give and bequeath to my said wife, Lydia R. Shreve, all the crops and provisions now on said farm, or which may be there at the time of my decease, upon condition, however, that she shall use the same for the support and maintenance of herself and my said two children, Mary and Florence; and I hereby nominate, constitute, and appoint my said wife, Lydia R. Shreve, guardian of my said two daughters, Mary and Florence, with full power, until she, my said wife, shall marry, to manage, control, and direct the use, rents, and profits of said estate, real and personal, in this article mentioned, and to appoint agents to aid in managing, controlling, and directing the use, rents, and profits thereof for the support and maintenance of herself, and for the support, maintenance, and education of my said two daughters, Florence and Mary, and with full power, also, to make proper expenditures to enlarge, add to, and secure to my said two daughters, Mary and Florence, and the survivor of them, the estate, real and personal, devised and bequeathed to them by this, my last will and testament, or so devised and bequeathed in trust for their benefit; also, with full power to do all and singular that may be necessary and proper in the premises, and to make, execute, and deliver all proper deeds, writing, and other instruments, under seal or otherwise, which may be necessary and proper in the premises for the benefit of my said two daughters, Mary and Florence, subject to the limitations and conditions hereinbefore in this article mentioned; provided further, and my will expressly is, that in case my said wife, Lydia R. Shreve, shall not accept of the provision and legacies in this my last will by me hereinbefore made, and given to her and for her benefit, and shall, at any time or times hereafter, prosecute any action or suit for dower, thirds, or any other part of my estate, real or personal, (other than what I have so hereinbefore devised and given to her in this my last will,) then and in that case, the said provision and legacies and bequests, by me hereinbefore given and intended her, shall cease and be null, to all intents and purposes, anything in this my last will to the contrary notwithstanding; and I do hereby will and declare that then and in the case last mentioned, her dower shall be set apart for her out of the estate, real and personal, in this article mentioned, saving and excepting, however, out of the farm and premises described in this article so much and such part of said farm as is now enclosed and used as a family burying-ground; and I hereby dedicate the part and parcel of said farm so enclosed and used for the purpose and uses of a burying-ground, to the use of my heirs and descendants forever,

and the said part and parcel so excepted shall not be used for any other purpose than that to which the same is hereby dedicated.

ART. 8. I give, grant, and devise to my son-in-law, Walker R. Carter, and my wife, Lydia R. Shreve, and the survivor of them and their successor, all my right, title, and interest, to a certain tract of land of two by forty arpens, situate in the township and county of St. Louis, and State of Missouri; which said tract was acquired by me from Edward Tracy and wife, by a deed bearing date the 15th day of October, A. D. 1836, signed by Edward Tracy and Mary Ann Tracy, and recorded in the recorder's office of said county, in book Y, page four hundred and twenty-nine; in trust, however, for the following purposes, to wit: Said Walker R. Carter and Lydia R. Shreve, or the survivor of them or their successor, under the direction of Messrs. Henry S. Geyer and Benjamin B. Dayton, or the survivor of them, and if either or both should fail to act, then, under the advice and direction of any other competent attorney, shall take such measures as shall be deemed necessary and proper for the purpose of quieting the title to said tract or parcel of land, or compromising with the adverse claimants thereof; and when the title is quieted, or the whole or any part thereof shall be recovered, the said Walker R. Carter and Lydia R. Shreve, or the survivor of them or their successor, shall, after paying the costs and expenses attending the quieting of said title, in the manner hereinafter provided, convey, release, and quit claim to the said tract, or so much thereof as may be recovered, as follows: To my daughter Rebecca A. Carter, her heirs and assigns forever, all that part thereof lying easterly of a line to be drawn southwardly through said tract to the southern boundary thereof, said line thus to be drawn to be a continuation southwardly of and in the same direction as the present boundary line dividing the land now owned by me on the north of said tract, from the land heretofore conveyed by me to said Rebecca A. Carter, as will more fully appear by a deed signed by me, Lydia R. Shreve, Walker R. Carter, and Rebecca A. Carter, dated May 23, 1850, and recorded in the recorder's office aforesaid, in book O, No. 5, pages 301 and following: Also, to convey, release, and quit claim to my two daughters, Mary and Florence, or the survivor of them, or to their legal representatives, all the rest and residue of said tract and parcel of land; provided, that if a compromise shall be made, and a less quantity than the whole shall be recovered, or money shall be recovered in lieu thereof, then conveyances shall be made to the said Rebecca and the said Mary and Florence, of parts of said tract so recovered, in proportion to the relative value of the parts thereof hereinbefore designated to be conveyed to them respectively, or the money so recovered, if any, shall be divided in the same proportion and manner, and whatever costs and expenses shall be incurred in the execution of the trust in this article created, shall be paid pro rata, out of any funds in the hands of said trustees belonging to said Rebecca A. Carter, and said Mary Shreve and Florence Shreve.

ART. 9. And I do will and declare, that in case my two daughters, Mary Shreve and Florence Shreve, shall come into possession of any part of the real estate in the eighth article of this my last will men-

tioned, then and in that case said part of said real estate shall be considered as attached to and belonging to that portion of my farm hereinbefore described and devised to my said two daughters, Mary and Florence; and said part of said real estate mentioned in the eighth article aforesaid shall be subject to the same charges, control, management, and limitations, and conditions, and to the rights and interests of my said wife, Lydia R. Shreve, therein, as are prescribed and annexed to the devises and bequests of real estate and slaves in the seventh article of this my last will and testament.

ART. 10. It is my will, further, that if my granddaughter Harriet V. Reel shall die without leaving lawful issue, then and in that event all of the real and personal estate, rights, and interests herein granted, devised, and bequeathed to her, shall vest in and become the absolute property of my daughter Rebecca A. Carter, and her heirs and assigns forever.

ART. 11. It is my will, further, that if both of my said daughters, Mary and Florence, shall die without leaving lawful issue, before they arrive at the age of twenty-one years, then and in that event all of the estate, real and personal, and all the rights and interests, in this my last will, granted, devised, and bequeathed to them, shall vest in my lawful heirs, who may at that time be living.

ART. 12. And I do hereby will and declare that all the devises, gifts, bequests, and interests, in this my will given and granted to my daughter Rebecca A. Carter, are intended to be, and are, in addition to any estate real or personal heretofore given, granted, or conveyed by me to her or her husband, or of any gifts or conveyances of property of any kind whatsoever heretofore made by me to her or her husband; and I hereby ratify and confirm unto her and her assigns forever, and unto her said husband and his heirs and assigns forever, all said gifts, grants, and conveyances by me heretofore made to them respectively. And I hereby nominate, constitute, and appoint, jointly and severally, my son-in-law Walker R. Carter my executor, and my wife Lydia R. Shreve my executrix, of this my last will and testament; and so as that, in case of the death of either of them, the survivor shall be sole executor or executrix of this my said will and testament; and I give to said survivor all the power and direction I have given my said executor and executrix; and I also give to each of them all the power, and repose in each of them all and every trust I have given to them jointly, provided so far as he or she shall have the consent of the other; and it is my will that neither of them shall be answerable for any of my estate by him or her received or to be received, to the receipt of which the other shall not have consented, or for any of the acts and doings of the other, except for such acts and doing as both shall have consented to; and I hereby authorize and empower my said executor, also my said executrix, to appoint to act, in his or her stead, any agents which shall to him or her, respectively, seem proper—said agent to act only for the executor or executrix who may appoint them his or her agents. And it is my will and desire that my said executor and executrix shall not be required to give security in this behalf, except a nominal one of, say one thousand dollars.

In witness whereof, I have hereunto set my hand and seal, and publish and declare this to be my last will and testament, [L. S.] on this sixth day of January, A. D. 1851.

HENRY M. SHREVE.

Signed, sealed, published and declared, by the above-named Henry M. Shreve, as and for his last will and testament, in the presence of us who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witness thereunto.

Before the execution, signing, sealing and publishing of said will, the following interlineation was made, to wit, on the 12th page, between the 16th and 17th lines thereof, the words "to the receipt of which the other shall not have consented."

JOSEPH J. CLARK.
SAMUEL TREAT.

Whereas I, Henry M. Shreve, of the county of St. Louis and State of Missouri, have, by my last will and testament, bearing even date herewith, disposed of certain personal property for the payment of my just debts, and charged certain real estate for the payment thereof, as specified in the first article of my said will; now I, said Henry M. Shreve, being desirous of altering my said will so far, and so far only, as relates to my right, title, and interest in and to a pew in the First Congregational church of the city of St. Louis and county aforesaid, which said right, title, and interest to said pew I, by this writing, which I will and direct to be taken as a codicil to my will aforesaid, and as a part thereof, and hereby revoking so much of my said will as may be inconsistent herewith: I do give, *that is to say, I do give and devise my* said pew, and all my right, title, and interest therein to my wife Lydia R. Shreve, and her heirs and assigns forever. And I do ratify and confirm my said will in every thing, except where the same is hereby revoked and altered as aforesaid.

In witness whereof I have hereunto set my hand and seal, and publish and declare this to be my codicil to my said last [L. S.] will and testament, on this sixth day of January, A. D. 1851.

HENRY M. SHREVE.

The written codicil signed, sealed, published, and declared by the above-named Henry M. Shreve as and for his codicil to his last will and testament, in the presence of us who, in his presence and at his request, and in the presence of each other, have set our names as witness thereunto.

Before the execution and publication of this codicil, the words *"that is to say, I do give and devise my"* were interlined between the 17th and 18th lines of said codicil.

JOSEPH J. CLARK.
SAMUEL TREAT.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-one, before me, Peter Ferguson, judge of probate of the county of St. Louis, per-

sonally appeared Joseph J. Clark, who being by me duly sworn on his oath, saith that he was present and saw Henry M. Shreve, the testator, sign his name to the preceding instrument in writing, purporting to be his last will and testament, and also saw him sign his name to the instrument in writing purporting to be a codicil to said will, and heard him publish and declare said will and codicil to be his last will and testament; that he, this affiant, and Samuel Treat, the other witness, subscribed their names to said will and codicil as witnesses thereto, in the presence of the testator and of each other, and that at the time of so doing he, said Henry M. Shreve, was of sound and disposing mind to the best of his knowledge, observation, and belief.

JOSEPH J. CLARK.

Sworn and subscribed before me this 26th day of March, 1851.

PETER FERGUSON,
Judge of Probate.

And on this twenty-seventh day of March, in the year aforesaid, also appeared Samuel Treat, who being by me duly sworn, on his oath saith, that he was present and saw Henry M. Shreve, the testator, sign his name to the foregoing instrument in writing purporting to be his last will and testament, and also saw him sign his name to the instrument in writing purporting to be a codicil to said will, and heard him publish and declare said will and codicil to be his last will and testament; that he, this affiant, and Joseph J. Clark, the other witness, subscribed their names to said will and codicil, as witnesses thereto, in the presence of the testator and of each other, and that at the time of so doing he, said Henry M. Shreve, was of sound and disposing mind, to the best of his knowledge, observation and belief.

SAMUEL TREAT.

Sworn to and subscribed before me this 27th day of March, 1851.

PETER FERGUSON,
Judge of Probate.

I, Peter Ferguson, judge of probate of the county of St. Louis, having examined the foregoing instruments in writing purporting to be the last will and testament of Henry M. Shreve, and a codicil thereto, and also the testimony of Joseph J. Clark and Samuel Treat, subscribing witnesses to the same, consider that said will and codicil are duly proved to be the last will and testament of said Henry M. Shreve, deceased.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office in said county, this 27th day of March, in the year 1851.

(L. S.)

PETER FERGUSON,
Judge of Probate.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, William F. Ferguson, clerk of the Probate Court of the county of St. Louis, certify that the foregoing is a true copy of the last will and testament and codicil thereto of Henry M. Shreve, deceased, and

the probate thereof, as the same now remains of record in the office of the judge of probate of the county of St. Louis, in the Record of Letters and Wills, book D, page two hundred and nine and following.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office in said county, this third day of April, in the year of our Lord one thousand eight hundred and fifty one.

[L. S.]

WILLIAM F. FERGUSON, *Clerk.*

No. 53.

THE UNITED STATES PATENT OFFICE.

To all persons to whom these presents come, greeting:

This is to certify, that the annexed is a true copy of the original letter to the Honorable Edward Cross, chairman of special committee of the House of Representatives, on file in this office.

In testimony whereof, I, Henry L. Ellsworth, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of February, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

[L. S.]

H. L. ELLSWORTH.

PATENT OFFICE, *February* 21, 1843.

SIR: In reply to yours of the 18th instant, requesting an examination of the plan of Mr. Prentiss and Mr. Shreve, I have the honor to transmit the opinion of the examiner of this office, who has detailed the peculiar properties and advantages of each invention, and I would only add his examination has been very particular.

Respectfully,

H. L. ELLSWORTH.

Hon. ED. CROSS, *House of Representatives.*

I enclose the papers.

PATENT OFFICE, *February* 21, 1843.

SIR: In conformity with your instructions, I have examined the descriptions of the methods of removing snags and sawyers as proposed by Mr. Daniel Prentiss and Mr. John Bruce, in their communications to the Secretary of War, in the year 1824, and compared them with the plan proposed and patented by Captain Henry M. Shreve, on the 12th of September, 1838, and have the honor to submit the following report:

The only resemblance between Mr. D. Prentiss's plan and Captain Shreve's is in the employment of a twin-boat and windlass, so combined together as to act upon the snag, to raise it from its bed when situated between the two boats—the space between them being sufficient for this purpose. This is the whole of the plan proposed by Mr. Prentiss—a plan which, at the time it was proposed, was known and

had been used in different parts of the world for the purpose of raising rocks and other obstructions from the bottom of rivers.

With the twin-boat and windlass Captain Shreve has combined various contrivances by which he is enabled to concentrate on a snag the power of the windlass, the momentum of the whole mass of the boat, and the power of the engines communicated through the paddle wheels. It is this combination (together with another point which will be hereafter mentioned) which presents the great features of novelty and usefulness that distinguish Captain Shreve's plan from all others before known.

The method proposed by Mr. Thomas W. Bakewell, as described in Mr. Prentiss's communication, is similar to Captain Shreve's plan only in the proposed employment of the momentum of the boat with the power of the engines applied through the paddle wheels, but the arrangement of mechanical means to accomplish this end is entirely different.

Mr. Bakewell proposed to employ a common steamboat, to attach a cable to the snag, pay out (as it is termed) two or three hundred yards of cable, start the boat, and when it had run a distance equal to the length of the cable payed out, the momentum of the boat and the power of the engine were brought to bear on the snag to uproot it. In this plan the power is applied to the snag through an elastic medium, (the cable,) which will greatly reduce the momentum of the boat before the snag can be seriously affected. Whereas these accumulated forces are brought to bear by Captain Shreve at once by a solid body, viz., the beam which unites the two boats together at the bow. There is not only a difference in the mechanical arrangements of these two plans, but one is necessarily superior to the other.

As to the plan proposed by Mr. John Bruce, it has no other resemblance to Captain Shreve's plan than the employment of a twin-boat, which, as I have stated before, was not new at the time it was proposed by Mr. Bruce, and, therefore, can have no bearing on the validity of Captain Shreve's patent, which could in no way be affected by any of these plans, were the subject submitted to legal investigation.

All which is respectfully submitted,

CHS. M. KELLER,
Examiner of Patents.

Hon. HENRY L. ELLSWORTH, *Commissioner of Patents.*

No. 54.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your petitioner respectfully represents, that he is the inventor of the steam snag-boats called Heliopolis and Archimedes, the property of the United States, which are now, and have been, in the service of the government, since 1829, under the direction of your petitioner, as superintendent on the Mississippi and its waters. That the invention has been attended with complete success; has answered all the hopes of the inventor, and fully met the anticipations of the

government. That the government, in 1824, offered a premium of one thousand dollars, for a model of a machine adapted to the removal of snags and sawyers from the bed of the Mississippi river—the premium to be awarded by the board of engineers, to the proprietor of the best model that might be offered. That the sum of $1,000 was paid to a gentleman for a machine which proved worthless, and that many thousands would probably have been fruitlessly expended in the same way had not the snag-boat of your petitioner been constructed and brought into use. By the use of the snag-boats the obstacles to the navigation of the Ohio, Mississippi, and Arkansas rivers have been overcome, and the improvements effected have saved millions to the industrious and enterprising citizens of the great valley of the Mississippi. By the aid of his invention the Missouri river may be rendered navigable two thousand miles above its junction with the Mississippi; and it will be required in the improvement of the navigation of all the great rivers of the west.

With the aid of Heliopolis and Archimedes, the progress made by your petitioner, in two months and ten days, in the removal or destruction of the great Red river raft, in Louisiana, was matter of general astonishment. About a sixth part of a work which was deemed almost impracticable—which no person believed could be accomplished for a less sum than a million of dollars—has been effected for $21,633. The raft was originally one hundred and forty miles in length. About seventy miles of it has been cut through; and your petitioner feels confident that, with an expenditure of one hundred thousand dollars more, the improvement may be completed before the first of June, 1835.

Your petitioner further states that, with the aid of said snag-boats, thirty-two men can perform as much labor in a day as can be performed by five hundred men without such boats; that when the Red river raft shall be removed, from the foot to the head, the navigation in the original channel will be as good as it has hitherto been below the raft; and that when the bayous running into the river shall be opened, and the outlets be closed, (which will necessarily be effected in the progress of the removal of the raft,) half a million of acres on the line of the raft will be reclaimed; a safe steamboat navigation will be opened six hundred miles up Red river, (above the raft,) through a fertile country of sufficient extent to form two large States, and the speedy sale of at least one hundred millions of acres of the public land (much of which is well adapted to the cultivation of cotton) will be insured.

Your petitioner further states that, had his invention been of a nature to be applied to private interests or to individual pursuits, he could have made it the means of independence and wealth. Had it been of that character, he could, under the Constitution and laws of the country, have secured to himself the exclusive benefit thereof; but its nature is such as to preclude the employment of it in any other than national improvements. He, therefore, appeals to the justice of Congress for reasonable and adequate compensation for his invention, from which he can, under existing circumstances, derive no personal advantage, but which must be beneficial to his country for ages to come. He does not ask for money: he asks only the privilege of lo-

cating twenty-five thousand acres of land, which may be reclaimed by the removal of the Red river raft, at the government price, (one dollar and a quarter per acre;) payment for which to be made within one year after the lands referred to shall have been surveyed under the authority of the government. And your petitioner will ever pray, &c.

H. M. SHREVE.

WASHINGTON CITY, *May* 1, 1834.

No. 55.

27TH CONG. 2D SESS., S. 294.—PRIVATE.

IN SENATE OF THE UNITED STATES, *July* 7, 1842.

MR. MOREHEAD, from the Select Committee to whom the subject was referred, reported the following bill; which was read, and passed to a second reading.

A BILL for the relief of Henry M. Shreve, and to authorize the purchase of his patent for the snag-boat.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized to pay to Captain Henry M. Shreve, out of any money in the treasury not otherwise appropriated, the sum of thirty thousand dollars, whenever the said Henry M. Shreve shall transfer and convey in proper form to the United States, all his right, title, and interest, in and to a patent heretofore granted to him, as the inventor of the snag-boat, and relinquished to the said United States all claim for the past use of said boat or invention, as well as claims of every other kind in anywise connected therewith or pertaining to his service as superintendent of improvements in the navigation of any one or more of the western rivers.

No. 56.

ENGINEER'S DEPARTMENT,
Washington, July 23, 1824.

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant, and I beg you to accept the thanks of this department for the valuable information it contains, and for the promptitude with which it has been furnished.

The advertisement for the proposals for removing sawyers, planters, &c., which impede the navigation of the Mississippi and Ohio rivers, requires that they shall refer to an extent of at least fifty miles on either of those rivers, but contains nothing to prevent their embracing

any extent greater than fifty miles, or even the whole extent of either or both rivers.

The department would be pleased to have an opportunity of examining the model of a machine for removing sawyers, planters, &c., adverted to in your letter, and if you should determine not to submit it for the premium, would cheerfully defray the expense of transporting it to this place, provided it is of a moderate size, so that the expense would be reasonable.

I have the honor to be, sir, very respectfully, your obt. ser'vt,

J. C. SMITH,

Capt. of Eng'rs, acting in the absence of the Chief Eng'r.

Captain H. M. SHREVE,

Commander of the steamboat Washington, Louisville, Ky.

No. 57.

A joint resolution in relation to the territory of the United States west of the Rocky Mountains, called the Oregon Territory.

Whereas it should serve to propel immediate action on the part of the general government that late negotiations with Great Britain left some conflicting claims unsettled, in relation to certain boundaries west of the Rocky Mountains; and it is firmly believed, from published evidences, that the validity of the title of the United States to the right of domain and exclusive jurisdiction between the forty-second and forty-ninth parallels of north latitude, embraced in the Oregon Territory, has been clearly established; and the immediate occupation of said Territory requires civil and military protection; and the deep and general solicitude to see such government occupation, is evidently proportionate to the great and manifest advantages expected to accrue therefrom; and, as the settlement of no other Territory ever promised to afford such increasing sources of trade, revenue, and power to the country east of the Misissippi, or to be more essential to the future peace and prosperity of the Union, all recent developments only serving to render that solicitude emphatically more audible. Therefore,

Resolved by the General Assembly of the State of Indiana, That our Senators in Congress be instructed and our Representatives requested to use their best endeavors to advance every proper measure calculated to enable and induce the Executive of the United States to take possession of, and organize a civil government within the country west of the Rocky mountains, called the Territory of Oregon; and as a due regard to peaceful relations with every other nation cannot require of the United States any abandonment or neglect of right, if the army of the United States be sufficiently strong to establish and maintain such fortifications and posts, to protect said territory as may be deemed proper and necessary; and if the army should need some increase for the service mentioned, to authorize such increase as may be deemed expedient.

Resolved, That the governor of this State be, and he is hereby, requested to forward a certified copy of the foregoing preamble and resolutions to each of our Senators and Representatives in Congress.

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President pro tem. of the Senate.

Approved January 28, 1843.

SAM. BIGGER.

GENERAL ASSEMBLY OF INDIANA.

A Memorial and joint resolution to the Congress of the United States, praying appropriations to improve the navigation of the Mississippi, Ohio, Wabash, and other important rivers, which are reserved national highways, and tributaries of those mentioned.

Whereas the finances of the State, embraced in the extensive quarter of the Union through which the Mississippi, Ohio, Wabash, and their national tributaries flow, are insufficient to remedy the existing evils produced by the obstruction to their free and safe navigation: And whereas it appears to your memorialists to be peculiarly within the power and resources of your honorable bodies to legislate on the all-important subject, and to make adequate appropriations with great general advantage, and enduring and profitable effect, that the vast source of now dormant wealth and enterprise which the improvement and removal of all the dangers, rapids, and impediments in those rivers would unfold and bring into action, in which the fifty millions of dollars worth of exports and imports now annually dependent upon their waters is but a moiety, together with the losses, dangers, injuries, and fatal accidents which happen with ruinous frequency on account of the obstructions and dangerous impediments alluded to, should, it is thought, give energy to the reflection that the improvement sought for is alone within the control, power, and means of Congress, and should induce early and efficient action in relation thereto; that obstructions and impediments in the rivers mentioned can be removed at a small expense, compared to the great damage they occasion, or to the great benefits which will accrue from their removal; and as little has been expended to improve and extend the commerce of the west, will, it is hoped, induce a liberal appropriation for the purposes mentioned, with skill and science to expend the same, under the direction of the War Department. Therefore,

Be it resolved by the General Assembly of the State of Indiana, That our Senators and Representatives in Congress be requested to use every exertion in their power to procure an appropriation to improve the Mississippi, Ohio, Wabash, and other important rivers which are reserved national highways, and tributaries of those mentioned, to be expended under the direction of the War Department.

And be it further resolved, That the governor of this State transmit a copy of this memorial to each of our Senators and Representatives in Congress.

THOS. JEFFERSON HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President pro tem. of the Senate.

Approved January 28, 1843.

SAM. BIGGER.

No. 58.

ENGINEER DEPARTMENT,
Washington, January 18, 1842.

SIR: The letter of honorable Edward Cross, chairman of the select committee appointed on the memorial of Captain H. M. Shreve, "praying remuneration for the past use of his patent for snag-boats," and "the purchase thereof for the future use of the United States," &c., having been referred to this office, I have the honor to submit the following remarks in relation thereto:

Mr. Cross desires, in the first place, "any information in the department in relation to the time when, and the authority under which, the first snag-boat was constructed by Captain Shreve."

On the 28th of July, 1828, Mr. Shreve wrote to the Engineer department, enclosing contracts entered into for the building of the first steamboat used for the improvements on the Ohio and Mississippi rivers. These contracts were approved by the department; and on the 22d of July, 1829, Mr. Shreve wrote to the department that the boat was finished and ready for service. The boat was, therefore, constructed between the 28th of July, 1828, and the 22d of July, 1829. It was constructed under the authority of the Secretary of War, as communicated to Mr. Shreve, from the Engineer department under date of the 27th of June 1828.

"If ordered to construct, was a model or plan previously submitted by him?"

Mr. Shreve submitted to the department an estimate of the probable cost of constructing the boat with the necessary machinery, chains, &c., for lifting and removing the snags and other obstructions. He did not submit any model, plan, or drawing of the boat—it was understood, however, that the boat would differ in its construction from those employed for ordinary purposes; otherwise, one of the latter would have been purchased or hired for the service.

"What correspondence took place in connexion therewith, prior to and at the time of such submission?"

The first suggestion that was made to the Engineer department for the use of steamboats in removing obstructions from the western rivers, is believed to have been made by one of its own officers, Major Delafield, then a lieutenant in the corps of engineers.

The first suggestion was made by Mr. Shreve for using steamboats, is believed to be contained in his letter to the department, dated October 1, 1827. Before making this suggestion, Mr. Shreve had witnessed the operations of Mr. Bruce, the contractor for removing the obstructions. He had also been engaged for some time on the work, as the superintendent, or government agent, and had operated with boats and machinery of his own construction, propelled and worked by manual labor, called machine boats. He repeated the suggestion of employing steamboats and steam power for removing the obstructstructions, in his letters of October 22, 1827, November 24, 1827, January 7, 1828, and June 9, 1828, July 13, 1828. In these communications he spoke of the difficulty of managing the machine boats, propelled by manual labor, in the rapid current of the Mississippi. He represented the operations with these machine boats as tedious and difficult, and stated that with them it would be impracticable to remove many of the larger trees and snags, which constituted the most dangerous class of obstructions. He gave it as his opinion, based upon his observation and experience in conducting the operations, that the employment of steamboats was necessary. He stated, moreover, that this opinion was concurred in by his assistants, and by all practical and experienced men engaged in or acquainted with the navigation of the western rivers. Upon these representations the department approved of his plan, and left the details of construction principally to himself. There is nothing in the correspondence of the period here alluded to which shows that Mr. Shreve expected to receive from the government any compensation for the use of any machinery or invention of his.

"Was the construction at the cost of the United States, and when the superintendent of the same was in the employ of the government at a stated salary?"

The construction was at the cost of the United States. The superintendent was in the employ of the government, and was in the receipt of a stated and liberal salary. The boat and machinery were not only constructed, but their usefulness was fully tested, at the expense of the government, and while the superintendent was receiving his regular salary.

I have the honor to be, very respectfully, your most obedient,

JOSEPH G. TOTTEN,
Colonel and Chief Engineer.

Hon. JOHN C. SPENCER, *Secretary of War.*

No. 3.

WAR DEPARTMENT,
Washington, December 15, 1856.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th ultimo, enclosing an order from the Court of Claims for certain papers to be used as evidence in the case of Lydia R. Shreve, &c.,

vs. the United States, and in reply transmit herewith reports from the chief engineer, and colonel topographical engineers, with copies of all the papers called for that are on file in this department.

Very respectfully, your obedient servant,

JEFFERSON DAVIS.
Secretary of War.

SAMUEL H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims.

BUREAU TOPOGRAPHICAL ENGINEERS,

Washington, December 10, 1856.

SIR: I have the honor to acknowledge your direction to report upon an application upon the Court of Claims for certain papers to be used in the case of Lydia R. Shreve, &c., *vs.* the United States, and to transmit herewith copies of the papers asked for, so far as they can be furnished from the files of this office, as follows:

1. Lieutenant Colonel Long, to Engineer department, dated September 3, 1824.
2. Captain W. H. Chase, to Engineer department, July 12, 1829.
3. Lieutenant W. Seawell, to Engineer department, December 4, 1829.
4. H. M. Shreve, to Engineer department October 20, 1833.
5. H. M. Shreve to Engineer department, August 4, 1835.
6. H. M. Shreve to Engineer department, August 10, 1835.
7. H. M. Shreve to Engineer department, July 6, 1836.
8. H. M. Shreve to Engineer department, December 4, 1837.
9. H. M. Shreve to Engineer department, December 26, 1837.
10. H. M. Shreve to Engineer department, April 1, 1838.
11. H. M. Shreve to Engineer department, May 18, 1838.
12. H. M. Shreve to Engineer department, May 18, 1838.
13. H. M. Shreve to Engineer department, dated June 4, 1838.
14. H. M. Shreve to Engineer department, November 10, 1838.
15. H. M. Shreve to Engineer department, November 10, 1838.
16. H. M. Shreve to Engineer department, December 4, 1838.
17. H. M. Shreve to Engineer department, January 13, 1839.
18. H. M. Shreve to Engineer department, February 14, 1839.
19. H. M. Shreve to Engineer department, June 7, 1839.
20. H. M. Shreve to Engineer department, June 7, 1839.
21. H. M. Shreve to Engineer department, December 23, 1839.
22. H. M. Shreve to Engineer department, October 31, 1840.
23. H. M. Shreve to Engineer department, June 12, 1839.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Col. Corps Topographical Engineers.

Hon. JEFFERSON DAVIS,
Secretary of War.

No. 1.

HENDERSON, *September* 3, 1824.

SIR: I have the honor to report, that I have just arrived at this place, and shall proceed directly to the examination of the sand-bar which I have selected for the experiment in which I have been directed to engage. The timber for the construction of a wing-dam is partially collected, but lies at present on the bank of the river several miles above the bar, and must be rafted down. Unfortunately, no timber suitable for the work is to be found in its immediate vicinity.

The water is yet two feet too high to operate upon the bar to any advantage, and doubts are still entertained whether it will be at a stage sufficiently low this season for that purpose. As soon as practicable I shall report relative to the condition of the bar, having previously made the necessary examination.

I herewith take the liberty to enclose a draft and specifications relative to the manner in which I think the snags, sawyers, &c., may be most easily removed from the bed of the Mississippi, and beg you will do me the favor to lay it before the board of engineers at the proper time.

I have the honor to be, sir, very respectfully, your obd't. servant,

S. H. LONG, *Major Top. Eng.*

Major Gen. ALEXANDER MACOMB,
U. S. Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Col., Corps Topographical Engineers.

No. 2.

SANTA ROSA ISLAND,
Pensacola, July 12, 1829.

SIR: I have the honor to transmit herewith a report from Lieutenant Bowman, on his examination of the present state of the navigation of the Red river, through or around the Great raft.

I would recommend, in the event of the determination of the department to make an application of the existing appropriations as estimated by lieutenant Bowman, that an agent be appointed immediately, so that the necessary preparations may be made for active operations during the low stage of water.

It is very important that the agent to whom this business may be entrusted should possess not only a thorough knowledge of the route and the present mode of navigating it, but likewise much intelligence and skill. Lieutenant Seawell, of the army, now stationed at Cantonment Jesup, near Nachitoches, accompanied Lieutenant Bowman in this reconnoissance, and yielded valuable assistance in its course. Lieutenant Seawell adds intelligence and skill to an intimate knowledge

of the route in view; and will understand better the grounds of Lieutenant Bowman's proposed operations than any other person. I would therefore recommend Lieutenant Seawell to your notice, that he may be appointed the agent for the improvement of the Red river, "under the immediate direction of the department, subject to the supervision of the commanding engineer in the Gulf of Mexico, whenever the department may deem it necessary."

Lieutenant Bowman's estimate amounts to	$21,175 00
I would add to it the sum of	3,471 75
To meet all contingencies of boats, tools, transportation of provisions, &c. &c. &c	24,646 75
The amount already expended by Lieutenant Bowman is	353 25
Total amount of appropriation	25,000 00

Of the articles purchased by Lieutenant Bowman there remain on hand the following:

One boat, valued at	100 00
Sundry articles, do	50 00
	150 00

These articles will be usefully applied in the course of the operations. They are in charge of Lieutenant Seawell.

I have the honor to be, sir, very respectfully, your obedient servant,

WM. H. CHASE, *Capt. Engineers.*

General CHARLES GRATIOT,
Chief Engineer, U. S., Washington city.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 26, 1856.

A true copy of the original on file in this office.

J. J. ABERT, *Col. Corps Top. Eng.*

No. 3.

CADDO AGENCY, LA., *December* 4, 1829.

SIR: Owing to the high stage of the Red river during the last month, I was not enabled to commence work in the Bayou Pierre route. I reached this on the 12th ult., having been detained in Natchitoches, waiting for the tools from New Orleans: and finding that the work could not be commenced, I proceeded to examine the upper route into lake Theodo, called the Red bayou route. Being of the opinion that a decision will be in favor of this route, I have, in order to avoid the delay that would be occasioned by waiting for a decision, commenced work on it. Lieutenant Bowman did not examine this route, but would have done it had not his pilot reported to him that it could not be passed; had he examined it, I am certain it would have been selected.

The point where Red bayou leaves Red river is about thirty miles from the head of the Cochetta chute, or about forty-five miles above the head of the raft. The distance from this point by the way of Red bayou to lake Theodo I have estimated at twenty-five miles.

Red bayou from its head to Small lake, a distance of about two miles, is from twenty to thirty yards wide, and has but few obstructions. Through Small lake to where the bayou takes out, is about six hundred yards; for the first three hundred yards, the passage is closed with willows from two to six inches in diameter; the remainder of the distance through this lake is open and wide. From the point where the bayou leaves the lake, to Cross bayou, a distance of about ten miles, the bayou is from forty to seventy yards wide, and contains a number of sweet gum trees and a quantity of button willows. From the head of Cross bayou to its confluence with Black bayou, is about two miles; the first mile the navigation is obstructed by only a few small sweet gum trees standing in the bayou; the last mile contains a greater number of these trees, and a number of abrupt turns, which can be avoided by means of a canal into Black bayou, from about three-fourths of a mile from the head of Cross bayou. From the foot of Cross bayou, down Black bayou to Clear lake, is about seven miles; there are only a few dead trees standing in this bayou and a few small rafts. Through Clear lake to Theodo lake, a distance of about four miles, there are only a few small cypress stumps.

Clear lake communicates with Theodo lake by a number of passes from thirty to one hunred yards in length. These passes are about five miles from the foot of the Coschutta chute, and in a direction from it a little north of west.

In no part of the route will it be difficult to remove the obstacles impeding its navigation. By making a dam at the point where the route leaves Small lake, the part of Red bayou below the dam, as also Cross bayou, will be nearly if not entirely drained; this being effected, the removal of the trees and brush from the bayou will not be attended with difficulty.

At the point A, (see accompanying sketch,) about three-fourths of a mile from the head of Cross bayou, the distance in a right line to Black bayou does not exceed two hundred yards; below this point Cross bayou becomes more narrow, contains a greater number of trees than above, and has a number of sudden turns. This, however, can be avoided by cutting a canal from the point A into Black bayou, and by constructing a dam a little below the head of this canal across Cross bayou, the water will all pass down the canal, and in a short time the canal will wash as wide as the bayou. The canal will pass through a prairie and will not be difficult to cut.

The remainder of the route will require but little labor to make a good navigation; but as the first part of the route (from the river to Small lake) will be liable to be closed by the falling of trees, it will be necessary in order to prevent this to clear away the trees from each side of the bayou for about fifteen feet back; beyond this distance the land on each side of the bayou slopes from the bayou. The cost of removing the obstacles impeding the navigation of the Red bayou route into lake Theodo, I do not think will exceed $8,000.

The work was commenced yesterday, and will be continued until the river rises, which I do not much expect will be sooner than the spring. I met with much difficulty in getting good able-bodied laborers; I advertised at $20 a month, but as this was the common price of the country I only obtained a few of this description, and to get them I have offered $1 a day. They are hired for one month, subject to be discharged at any time their services are not required. The objection of persons owning slaves to hire them, was the danger of losing them by sickness, as they would necessarily be exposed; and to remove this objection I have employed a surgeon at $100 a month, subject to be discharged at any time his services are not required, and am in hopes it will meet with your approval. The presence of a surgeon, I am of opinion, is necessary; this country is seldom healthy before the middle of November, and persons working on the river are liable at all seasons to the bilious fever. There have been a few cases of the ague and fever among the laborers.

I would recommed to the department that an examination be made of the raft of Red river. Unless something be done to permit the escape of the annual floods, all of the most valuable lands on the river above will in a few years become lakes. There are Indians now living, who remember when lake Theodo and nearly all the large lakes on the river were prairies. Large lakes have formed within the last three years. The Caddo prairie, where the Caddo Agency now is, Long praire, and several other extensive prairies on the river, were never inundated until about three years ago. The spring before the last these prairies were three feet under water at the time of the rise. I am of opinion, that on an examination of the raft the difficulty of opening the old channel, or of cutting across points where it can be done at a less expense, will not appear so great as is imagined by many. All that is known of the raft has been obtained from hunters. Major Birch in his examination of the raft only saw it at a few points, and therefore no information is to be obtained of it by a reference to his map. It is said that the best Red river land lies in that portion of it closed by the raft; if this be true, the sales of the land that would be redeemed by opening the raft, would pay the expenses attending it.

Enclosed is my return, &c., for the month of November, 1829. I have forwarded estimates for the months of the first quarter of 1830, as the funds will be required by the time they are received.

I am, sir, with much respect, your obedient servant,

W. SEAWELL,
Lieutenant 7th Infantry, on Engineer duty.

Brig. Gen. GRATIOT,
Chief Engineer, Washington D. C.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Col. Corps Top. Engineer

No. 4.

OHIO RIVER, *October* 20, 1833.

SIR: Accompanying I transmit to the department an estimate for continuing the improvement of the navigation of the Ohio and Mississippi rivers, during the year 1834, amounting to $150,000. I have again estimated for working on the banks of the Mississippi river. For my reasons for so doing and my opinions on that part of the plan formerly adopted for the improvement of that river, I beg leave to refer you to the annual report of work done during the year ending the 30th of September last. To carry on the operations on a scale that will employ to advantage the steamboats now owned by the government, the full amount of this estimate will be required.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE.

Brig. Gen. GRATIOT,
Chief Engineer, Washington, D. C.

Annual report of work done for improving the navigation of the Ohio, Mississippi, Red, and Arkansas rivers, ending 30th of September, 1833.

In the months of October, November, and December, 1832; January, February, and March of this year; the steam snag-boats Heliopolis and Archimedes removed from the bed of the Mississippi 1,293 snags. The same boats in August and September, 1833, removed from the bed of that river 667 snags, in all 1,960 snags during the year. The crews of the same boats have within the year felled from the falling-in banks of the Mississippi, at times when the water was too high to remove snags, and when the engines of the boats were out of repair, about 10,000 trees. During the month of November last, those boats were engaged in removing the Choctaw Indians from Memphis, Tennessee, and Vicksburg, Mississippi, to the mouth of the Arkansas river.

One hundred men were employed in August, September, October, November, and December, 1832, felling timber on the banks of the Mississippi river, and cutting snags from the dry bars and island chutes. They proceeded from St. Louis to the mouth of the St. Francis river, distant 500 miles, where they cleared the timber from the falling banks and dry sand bars. The last named work, (felling timber from the banks of the river,) is thought by many persons to be an injury, and not an improvement to the river. I am, however, of a very different opinion. I believe it to be the only effectual mode of removing obstructions from the shores, and of great importance to the improvement of the channel. This opinion has been formed from actual observation. For some five or six years the trees have been cut from the falling banks of the river, nearly all the distance for the first 300 miles below the mouth of the Ohio, where the shores of the river are comparatively clear of snags, logs, roots, safe to land at with a flat-boat, and in the stream the accumulation of snags are not more

than half so great as in those parts of the river where the timber has not been felled from the banks; nor are the banks safe to land at with any description of boat, in consequence of the bends where the banks fall in being very much obstructed along the shores with the trees, roots, and logs that are falling in with the banks. Many persons object to felling the timber above alluded to, alleging that the stumps roll in as the bank caves in, and lie on the bottom, forming a dangerous obtruction to the navigation. This seems an erroneous opinion. Every man, well acquainted with the character of the Mississippi river, must recollect that the banks that fall in are washed by the deepest and most rapid portion of the stream; consequently, when a stump slides from its foundation, it sinks below the draft of any craft that can navigate the river, as the bends where the banks fall in are universally from ten to fifteen feet deeper than the best channels over the bars that stretch across the river from the foot of one bend to the head of the next at almost every point in the river. Where the timber falls in, the roots sink, and the top either floats and forms a snag, or the top of the tree lies on the bank, and keeps the shores perpetually obstructed to such an extent that the flat-boats are prevented from attempting to land at them, and if caught in a gale of wind they are obliged to pull for the first bend they can make, and are frequently stove and lost; and if they make the land, they are liable to be sunk by the trees falling on them. That work has, however, been abandoned for the present year, very much against my judgment.

During the last year several steamboats have been lost by striking logs and snags; but none of them were good and substantially built built boats. I would here beg leave to observe, that a great many of the boats now navigating the Mississippi river are very light timbered, just sufficient to hold the plank together to bear caulking; consequently, if one of those boats strikes a snag, drift-log, or anything of sufficient weight to fracture the plank, the boat is stove and sunk. The inquiry is then made, what did she strike? the universal reply is, one of Shreve's stumps; but if it was a stump, and a firstrate substantial boat were to strike it, she would evidently be stove; for a stump is one of the most dangerous description of obstructions that could be in the river. But I have not known a good substantial steamboat to be stove, excepting one, for the last four years. The heavy boats of 300 tons and upwards, are nearly all stout well built boats and from their greater draft of water are more liable to strike than those of a smaller class, and if they do strike must receive a much heavier shock from their greater weight and greater speed with which they run, for the largest boats are universally the swiftest; yet but one of that class of boats has been stove in the Mississippi river in the last four years. Consequently, I am of the opinion that almost all the losses of steamboats for the last four years from being stove, have occurred from the insufficiency of the boats, and not from the stumps to which nearly all the losses are charged. I am of the opinion that the Mississippi river is at this time as safe to navigate, excepting in extreme low water, as it will ever be. For the improvement of the extreme low water navigation of that river, much is yet to be done. To execute that part of the

work it requires extreme low water, which continues but a short time in each year, consequently requires a longer time to complete.

In the Ohio river there was a dam built last fall at French island, one at Three-mile island, nearly completed. The dams commenced at the Suffletown bar and the Three-sister islands were finished. At those places the improvement effected has been quite equal to my most sanguine expectations. They were formerly the most difficult and shoalest bars on the Ohio river, at which no difficulty is now experienced by any boat that passes. At the head of Cumberland island, a dam was commenced in September, 1832, which was so far completed as to produce a material change in the channel to the left side of the island, and probably would have been completed last year had not the cholera made its appearance among the laborers engaged on the work, about the 25th of October, which suspended the work for six weeks. A rise of water on the 13th of December made it necessary to close the whole operation for the year. In August last, the work was again commenced at that dam, and has since been progressing as fast as circumstances will permit. In consequence of the prevalence of the cholera last fall, and again in the summer of this year, laborers have been difficult to obtain. There are now about two hundred men employed on the work. The dam is finished, except closing the pass through it, which was necessarily left for the passage of boats until the chute to the left of the island had sufficiently washed out and deepened to admit boats navigating the river to pass through it. There is now within a few inches as much water through the chute as there is on many bars between it and Louisville, and doubtless before the dam is so far completed as to prevent the passage of boats through it, there will be much more water through the chute than can be found in many other parts of the river above.

My present calculation is to finish the dam before the rise of water in the winter stops the work, which when done will be a lasting and valuable improvement. The advantages gained by its construction, are, to make the Ohio river navigable on that side of the island on which the Cumberland river enters, which has heretofore been obstructed by a sand bar several feet above the level of low water. At the extreme low water this year, there has not been less than eighteen inches over that bar. At this time there is three feet, and a large portion of the boats pass that channel, and when the dam is completed the bar will evidently entirely disappear. One of the shoalest bars in the river, situated at the foot of the same island, will be effectually improved by the same dam. Those immediately interested in the navigation of the Cumberland river, and the citizens of Smithland, a flourishing town at the mouth of that river, were apprehensive that if a dam were built at the foot of the island and below the mouth of the Cumberland river, that the passage up the Ohio to the mouth of the Cumberland river would be materially injured at low water. They therefore petitioned the Secretary of War to instruct me to commence and build the dam required at the head of the island, where it is now building. To those petitions I respectfully beg leave to refer, as also to my instructions on the subject. I commenced the dam, believing it to be a practicable undertaking, and of great im-

portance to the navigation of both the Ohio and Cumberland rivers. My opinion has been strengthened by the construction of the dam, as far as it has been done. It has, however, required much more labor and time than I anticipated, and will yet require much to finish it. The rock of which it is constructed has been quarried out of a solid limestone rock. The length of the dam is about half a mile; the average depth of water at its lowest stage, about twelve feet; the top of the dam is raised four feet above the surface of low water; its base will average thirty feet. Of the complete success of the improvement I have now no doubt. It is now absolutely necessary to finish it at as early a day possible. To accomplish that object every exertion in my power is now making.

For a statement of the operations at the Great raft on Red river, I beg leave to refer to my report on that subject, under date of the 30th of July last. A rough sketch of the Red river, the bayous, lakes, and swamps where the raft is situated is herewith forwarded. It was taken from the foot of the raft at Coate's bluff as I passed up; from thence to the head, from the best information I could obtain, it is by no means strictly correct, but will convey a more correct idea of the country than can be otherwise given.

Preparations were made for removing the snags in the Arkansas river in August last. But when the steam snag-boats entered that river, it was found too low to operate with those boats, and but 20 snags were removed. So soon as the water rises in the approaching winter, that work will be begun and executed, to as great an extent as the appropriation for that purpose will admit.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE.
Superintendent.

Brigadier General C. GRATIOT,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy from the original on file in this office.

J. J. ABERT,
Colonel corps Topographical Engineers.

[For sketch of Red river, &c., see original.]

No. 5.

LOUISVILLE, KY., *August* 4, 1835.

SIR: I have the honor to acknowledge the receipt of your letter dated the 25th ultimo, informing me of the receipt of my letter of the 13th, transmitting explanations of accounts, with a letter to the Third Auditor. I shall not neglect to furnish an estimate for the overplus of expenditure on the Ohio and Mississippi from Pittsburg to New Orleans.

Colonel J. Brookes's communication to the department, relating to

property belonging to the United States, a part of which has been received by me, has been received. I have this day written to Mr. Brookes and to Mr. James C. Crenshaw. The latter gentleman is on the Red river, in the vicinity of the agency, and will take charge of the balance of the property alluded to, by which means Mr. J. Brookes will be relieved from further responsibility.

The communication from the General Land Office has also been received. All the information in my power relating to these lands, &c., shall be forthcoming in a few days.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Top. Engineers.

No. 6.

LOUISVILLE, KY., *August* 10, 1835.

SIR: In reply to the letter from the Commissioner of the General Land Office to the Engineer department, dated the 24th of July last, and referred by that department to me, I have to state that the accompanying sketch of the Red river bayous, lakes, ponds, &c., situated within that portion of the river where the Great raft was located, has been corrected in some parts from the rough sketch forwarded to the department in 1833. It is yet very imperfect, but is the best I can offer, and may serve to give information that may be useful. My knowledge of the adjoining lands is not extensive enough to enable me to give anything more than a general description of them.

The Great raft, in its original location, extended down the river from the head of Black bayou, which runs out of the river on the southwest side and falls into Lake Caddo, to the mouth of Loggy bayou, a distance, by the meanders of the river, of about one hundred and sixty miles. The valley is about twelve miles wide, crossed in many places by bayous, and interspersed with numerous lakes and ponds. The banks of the river and the bayous, and many of the lakes, are above the highest freshets, and the lands of sufficient depth to admit of extensive plantations. Many of the flat lakes have been drained by the removal of the raft and will be of great value for the growth of cotton and rice. One-half of the valley will probably be found to be above inundation. The land from the head of the raft to the line of Louisiana, (33 deg. north lat.,) distant in a due north and south line about fifteen miles, is of a good quality. That on the northeast side is high or upland, all of which is gently undulating

and lies well for cultivation. That on the southwest side is cut up by the bayous and lakes, and is similar to that part of the valley from which the raft has been removed; but when the removal of the raft is completed, a much greater effect will be produced by drawing the head of water off than has been felt on the raft below. Immediately at the head of the raft the effect must be to reduce the rise of water at least seven feet. That drain will be extended up the river some twenty or thirty miles, in proportion to the descent of the inclined plane.

On the map I have marked thus * all the tracts of land on the river that can be held by settlement right under the pre-emption law of the 19th of June, 1834, from the head of the raft to its foot. I have done this that the Commissioner of the General Land Office may be enabled to give instructions to land officers on the subject, that may in some degree guard against the extensive frauds that are committed against the government in all such cases. I am well aware that there are many settlement rights that will be offered, and if some very vigilant means are not used to prevent it, extensive frauds will be committed in this section of the country. As to the places marked on the map I cannot be much in error, as I was in the country in 1833, as late as the 23d of June, and know every point where any settlement was then made.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Top. Engineers.

No. 7.

LOUISVILLE, *July* 6, 1836.

SIR: I have the honor to inform the department that my accounts for disbursements made for my last expedition to Red river and for the removal of the Great raft have been settled and forwarded by this morning's mail. The amount expended during the last four quarters has been $64,961 40. The whole amount expended under my superintendency for that object is $157,338 62. The first year (1833) seventy miles of the raft was broken up and taken out of the river. During the second year's operations (1835) that part of the river from which the raft was removed in 1833 was cleared of the green timber and some remnants of the raft not thoroughly removed were taken out and sixty miles of the raft removed. This year twenty-one miles have been removed, leaving nine miles yet to be taken out, besides a

canal, which I contemplated cutting through a point of land 160 yards, which will shorten the river seven miles and facilitate the removal of the remainder of the raft. The last thirty miles of the raft that has been removed has required as much labor as the first one hundred and twenty miles. This great difference in labor has been occasioned by the increased quantity of timber and its particular location. The last thirty miles was in a part of the river from which a large portion of the water had been carried off by being forced out of the river above the head of the raft on its right bank, through a number of bayous that communicate with a chain of lakes about thirty miles in length, lying between the river and the highlands on its southwest side, distant from the river about four miles, and bounded by the high land to the southwest. The water flows through those lakes, and falls into the river through three bayous about forty miles below the head of the raft and one hundred and twenty miles above the original foot of the raft. Ten miles below the head of the raft, there is also a large bayou running out of the river on its left bank called the Willow chute. Eleven miles lower down there is another extensive outlet on the same side, called Bennares bayou. These two streams carried off all the water that flowed down through the upper end of the raft, and left the river a dead pond for nearly twenty miles, except in high water, when a portion of the water that flowed down through Caddo lake on the right bank flowed up the old bed of the river, and passed off through the Benwares bayou and the Willow chute, which fall into the Bodeau and Bestincan lakes on the northeast side of the river. Those lakes empty their water into the river through two channels below the original foot of the raft, called the Loggy bayou and Cortada chutes. The Willow chute and Bennares bayou have been filled with timber from the raft, and are partially stopped. The raft has been removed one mile above the Willow chute. The remaining nine miles will probably not be so difficult to remove as the last thirty miles below has been; still it contains a larger quantity of timber in proportion to distance. But that timber is not so deeply imbedded in the mud and sand, nor is it so much overgrown by green timber as that which has been removed during the present year, a great portion of which had more the appearance of a forest than a river. The remainder of the raft will be removed with less labor, as it has the advantage of a greater portion of water flowing through it, and a less number of islands to be removed, than has been taken out of the river below. Under these circumstances, the department may calculate with confidence that the whole raft will be removed by the month of April next, provided the appropriations estimated for are made at the present session of Congress, which I hope will be the case, as I am desirous of finishing the work as early as it is possible to accomplish it. When the raft is all removed the navigation will be good, and will admit of steamboats of 250 tons passing through that part of the river where it was located at least nine months in each year. There have been twenty-seven trips made this year from the 15th of January to the 25th of May by steamboats as high as Coates's bluffs, which is one hundred and fifteen miles above the original foot of the raft.

The navigation from that bluff to the head of the raft will be better than it is below so soon as the remainder of the raft is removed. I am of the opinion, however, to make the improvement permanent, it will be necessary for the government to keep one boat at work for several years after the raft has been removed. The river has been contracted in its width at many points by the deposits occasioned by the location of the raft. Those alluvial bottoms are washing away by the action of the current on the banks, and will continue to deposit the timber that stands on them in the stream. Many logs that yet remain on the bottom of the river will be loosened by the same cause, and rise to the surface of the water. Those that have heavy roots will form snags, which, together with the trees that fall in from the alluvial banks, must be removed as they accumulate, otherwise the raft may reform and obstruct the navigation. That kind of obstructions will not accumulate longer than four or five years, after which time there can be no renewal of the raft; the river will have been opened to its original width, which will give it sufficient capacity to carry off all the timber that flows down during its annual freshets. The removal of the raft will extend the steamboat navigation from its lower end to Fort Towson, a distance of seven hundred and twenty miles. That part of the river between the head of the raft and the mouth of the Kiamachi river, (five hundred and sixty miles,) may be much improved in its navigation by removing the snags from its bed, which can be done at a small expense by the boat that will be necessary to complete the improvements in the raft. I would therefore recommend that provision be made for that operation to be carried on at times when the boat alluded to can leave the raft with the least loss of time in her operations there, and when the water in the river is at the most favorable stage for the removal of the snags above. To attempt an estimate of the amount of funds yet necessary to complete this improvement would be so much at random that I cannot venture an opinion on the subject. However, my present calculation is that $45,000 will be sufficient to build a boat and finish the work. But so much depends on the price of labor and subsistence, which is advancing so fast that no calculation can be made to estimate, with any degree of correctness, what any work will cost that depends on those two items to so great an extent as does the work in question. I can make no calculation on obtaining labor to finish that work at a less rate than twenty-five dollars per month, nor have I any assurance that it can be had at that rate. The wages now paid on steamboats navigating the western rivers is much higher.

In my report dated 1st July, 1835, I stated that there was no doubt that the whole work of removing the raft would be gone through during the course of the last winter and spring; but experience has shown a different result, which was owing in part to the remainder of the raft being much more difficult to remove than I had calculated, and from the great loss of time during this year from sickness among the laborers. By reference to the pay-rolls it will be seen that 9,000 days work is charged as lost time, amounting to a deduction in pay of $7,347 15. The loss to the progress of the work was in a much greater proporition, as it required a deduction from the effective force

to nurse and attend the sick, besides the debility occasioned by the sickness that prevailed among a large portion of the whole force employed during the year.

The location of the raft is very unfavorable, being in a climate that will not admit of men laboring in the summer and fall months, and where there is no labor to be procured. Consequently all the force necessary to execute that work must be taken from the Ohio river.

The nature of the work is, in itself, calculated to produce disease. The men are constantly exposed to the sun, and a large number of them must work in the water, surrounded by a dense mass of decaying timber, of which the raft is composed. Still, under all these disadvantages, I shall probably accomplish the removal of the remainder of the raft by April next, and at as small an expenditure as I can by any means effect the object.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy from the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 8.

LOUISVILLE, *Kentucky, December* 4, 1837.

SIR: I have the honor to inform the department that I have succeeded in making the arrangements from my own means, and on the authority given by the department letter, dated the 22d of August last, to use the steamers Eradicator, Pearl, and Laurel, with the other boats and tools belonging to the Red river, in raising sufficient funds to fit out the expedition contemplated for removing the remainder of the raft in Red river. The steamer Eradicator will leave this place, with a force of 65 men, on the 7th instant. The Pearl will be despatched by the 15th instant with a like number of men for the raft. With that force I shall unquestionably be able to complete the work so as to open the navigation in all the month of April next. I hope the department will use its influence to have the appropriation called for for that object made by Congress, at the earliest possible period, and, if practicable, in time for the funds to be available by the 1st of April, as the wages to the men must be paid in all that month. If the appropriations can be got through in time, it will make my present arrangements much more advantageous than a delay of the appropriation to the end of the session. I hope the department will excuse my earnest solicitation on this subject. As I view it as a work of great

importance to the government and the people, I am very anxious to complete it at the earliest possible day.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineers, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 26, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps of Topographical Engineers.

No. 9.

LOUISVILLE, KY., *December* 26, 1837.

SIR: I have the honor to acknowledge the receipt of your letter dated the 18th inst., accompanied with a copy of a letter from the Hon. Rice Garland, of Louisiana, to the Secretary of War, dated 7th of August last, enclosing a remonstrance from the citizens of the parish of Natchitoches against my operations in removing the Great raft in Red river, which you inform me is forwarded to me for my information, and requesting me to make an early reply. In answer to the petition, I have first to refer the department to a rough sketch of Red river, within the location of the Great raft, forwarded with my report of 1833. In that sketch it will be seen that the cut-off referred to by the petition, is marked and laid down as the original plan of the work, and when the raft was firm in the river for about thirty-six miles below that point. It will also be seen that the Bayou Pierre leaves the main river at the foot of a bluff in the bend contemplated to be cut off, and does actually carry off at least one-half of the water from Red river through swamps, lagoons, and lakes, and falls into the Red river again about twelve miles above the town of Natchitoches. To secure the navigation of the Red river below the point where the Bayou Pierre leaves it, down to the foot of the raft, a distance of about 105 miles, it is, in my view, absolutely necessary to turn as much of the water back into the original channel of the Red river as practicable. I have done all that I could do to stop the various bayous with timber that leave the river on the west side and carry off the water through the Bayou Pierre. I will here remark that when the work was commenced in April, 1833, there was no current through the lower part of the raft for about forty miles, say up Pascagoula bayou one of the principal outlets from the main channel to Bayou Pierre. On reaching that bayou I filled it for several miles with as dense a mass of timber as could be forced into it. By that means a current was produced in the main channel of the river. I have also found it necessary to stop up all the bayous on either side of the river, throughout the whole course of the raft as effectually as it could be done, and

had I been prohibited from pursuing that course it would have been impracticable to remove the raft, or to have produced sufficient water in the main channel of the Red river for navigation. For example, the Bayou Pierre has been formed entirely by the action of the water backed up in the river by the raft. I can furnish testimony from a number of respectable citizens on the Red river, in the vicinity of the head of the Bayou Pierre, that twenty years ago there was no such bayou running out of the river, or a stream so small where that bayou now flows out that the settlers crossed it on a single fence rail. To bring the main channel of the Red river back to it soriginal capacity and usefulness as a navigable stream——. Nor can that part of the river from the point where the Bayou Pierre leaves it to the mouth of Loggy bayou, which enters from the east side near the original foot of the raft, ever be placed in a situation to have sufficient capacity to carry off the drifting timber that is brought down in the periodical freshets of the Red river, without lodging and renewing the raft so as to obstruct the whole navigation. As relates to the usefulness of the navigation of the Bayou Pierre, it may be improved so as to be used for navigation as far up as the entrance of a headwater stream coming from the west side of the river called Bayou Pierre. But to carry that navigation through to the Red river at Coate's Bluff, I do not deem practicable, nor is it possible to use that pass unless the main channel is abandoned, which is now navigated by steamboats carrying 1,200 bales of cotton along the whole course of the Bayou Pierre, from twelve miles above the town of Natchitoches to Coate's Bluff, a distance of about 230 miles, on the banks of which is almost a continued line of cotton plantations, and at no point in that distance more than five miles from the Bayou Pierre. The department will be enabled to judge what would be the consequences of injuring that length of navigation. But that is not all; the whole river above would in a short time be cut off from the navigation below, by the reaccumulation of the raft, if any attempt is made to open the head of Bayou Pierre to the Red river at Coate's Bluff or at Pascagoula bayou. As relates to the commencement of cut-off near Bayou Pierre, the timber has been cut down across the neck of land where it was contemplated to make that cut-off which is at the precise place as marked on the sketch above alluded to. The distance across is about forty yards. The bank on the upper side is washing and caving in fast with each successive rise of water, and must in a very few years, say three, make its own way through and produce the same effect on the Bayou Pierre that would be completed by the operations which I had intended to do during the present season. After the timber was felled, the citizens in the immediate vicinity assembled on a Sunday, and cut a small ditch across the neck of land, but not so far as to communicate with the water quite through the pass. I view the subject in the same light now as when I sent the rough sketch on the 30th September, 1833, and protest against being held responsible for the success of the improvement below that point, if I am not permitted to carry that part of the original plan into successful operation, which must now depend on the decision of the department, which I hope will be made at the earliest possible day and forwarded to me on the raft, where I

shall be in a few days. As relates to the last clause of the petition, it states that the petitioners verily believe that I wish to make the cut-off to advance my own personal interest, and not the public good, being a co-proprietor in the town of Shreveport and the proprietor of land the value of which will be enhanced by the effect of the said cut-off. Of Shreveport, I am one-seventh proprietor. That town lies on the west side of the river, about four miles above the contemplated cut-off. There can be no advantage to that place, either directly or indirectly, from the effect to be produced by the cut-off in question, that will not be extended to the whole country above that point, and that advantage or disadvantage, as the case may be, will be in common with all parts of the country that has an interest in the success or failure of that important work. The town of Shreveport is situated on a bluff, and cannot be effected by the cut-off in the Bayou Pierre. In relation to land that I am proprietor of, which the petitioners state will be benefited by the effect of the cut-off, I have to state that in the spring of 1835, when I found it absolutely necessary to make a cut-off about four miles below the one now complained of by the petitioners, on the neck of land where it was necessary to make the channel and where the river now flows, there was a settlement that had been made some eight years previous, and a cultivated field laid in the only place where I could make that channel. The owner of the land, or the settler on it, complained of the damage he would sustain by the operation. To quiet his complaints I proposed to buy his settlement right; an agreement was made, and I paid him $800 for it, and which will appear on record in the proper office at the town of Natchitoches. As to any enhancement to the value of that land by making the cut-off complained of, it will be precisely the same as to all other lands lying on the Red river, from the aforesaid cut-off to the mouth of Bayou Pierre, twelve miles above the town of Natchitoches. That land is, however, not yet my property, nor do I know that it ever will be, as it depends on the action of Congress, as the land in question has not yet been surveyed.

In the Hon. Rice Garland's letter to the Secretary of War, he states that such an accusation merits an inquiry, as well for the matter complained of, as also into the cause of the delay in completing the improvement on Red river. If this explanation is not in every particular entirely satisfactory to the department, I hope an inquiry will be ordered forthwith, and that competent officers be instructed to proceed to the raft as soon as practicable. Lieut. A. H. Bowman is well acquainted with the situation of the rivers, bayous, &c., in the vicinity of the raft, and I have no doubt will give it as his opinion that the cut-off must be made or the river below will not be successfully improved. I must, however, beg leave further to state that, as relates to the delay in not completing the improvement in Red river, such complaint is unjust and illiberal in the highest degree. On that subject, however, I must be permitted to state that I feel above censure from any quarter that it may come, particularly from the citizens of Natchitoches, who to my own knowledge and belief have been (or that portion of them at least who signed the peti-

tion in question) hostile to the removal of the raft from the commencement, and from interested motives. The town of Natchitoches has heretofore been the head of navigation, and will probably lose some advantages by the success of my operations in the raft. The department is in the possession of sufficient evidence to satisfy any reasonable person or persons in relation to my exertions in bringing that work to a close at the earliest possible day. I can further assure the department that the navigation will be open quite through within ninety days from this time

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brigadier General C. GRATIOT,
Chief Engineer, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps of Engineers.

No. 10.

U. S. STEAMER ERADICATOR,
Red River Raft, April 1, 1838.

SIR: By my letter to the department dated the 26th ult., you were informed that the Red river raft was cut through. In confirmation of that fact, I have to inform you that steamers, keel, and flat-bottomed boats now navigate it daily without difficulty. Seven steamboats, four keel-boats, and one flat-boat have passed, (the government boats not included.) I left Shreveport on the 29th ult., with the U. S. steamer Pearl, at nine o'clock a. m., and ran out at the head of the raft—distance 52 miles—at ten minutes before five p. m.; the average speed on the trip was over 6½ miles an hour. On the 31st ult. the steamer Bryan Borohue made the run with a full cargo in seven hours and thirty minutes. I name these facts to show to the department that no obstructions of consequence now remain in that part of the river, or such speed could not be carried through the whole trip. That part of the raft which was located below Shreveport has been successfully navigated for three years past; its distance is one hundred and fifteen miles.

I hope Congress will make an appropriation at their present session sufficiently large to admit of the Eradicator returning to this river at as early a date in the fall as she can be got up the river. It will be necessary to enlarge its channel at the most contracted points, to give room for the drifting trees to pass down without clogging. When the river has its greatest freshets, a large quantity of timber flows down,

and must form new rafts, if they are not cut straight, and passed down until the river is cleared to such a width as to take them down whole.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

General C. GRATIOT,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 11.

LOUISVILLE, *May* 18, 1838.

SIR: Herewith I transmit to the department Captain Dillingham's monthly report of work done by the snag-boat H. M. Shreve in the Arkansas river, during the month of December, January, February, March, and April last, by which it will be seen that 1,211 snags were removed from its bed, and 1,572 trees felled from its caving in banks. Also Captain Cooper's monthly reports of work done by the crew of the steamer Java and two machine boats, in the same river and during the same months, by which it appears that 37 snags were taken from the bed of the river, 8,007 logs cut from under the banks that had fallen in, and 50,220 trees felled from its caving-in banks. The aggregate by the two boats is 1,248 snags removed from the bed, 8,007 logs cut that had fallen under the banks, and 51,792 trees felled from the caving-in banks. That work has all been from the mouths of the Arkansas and White river, passing up the latter six miles, and through the cut-off leading from White to Arkansas rivers six miles, (the route that is commonly used by boats navigating the Arkansas river,) up to Little Rock, which has taken all the obstructions out of the river that are to be seen at a medium stage of water. There are yet, however, many snags remaining in the river that are dangerous to its navigation at extreme low water, which cannot be removed where the water is a few feet above its extreme low stage. The machine boats succeeded in removing the snags from the bottom of the river in August, September, October and November last, from Little Rock down about seventy miles. They are now laid up in the Arkansas river for safe keeping, and will be ready to resume that part of the work in September next, if deemed proper by the department.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.
J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 12.

LOUISVILLE, *May* 18, 1838.

SIR: Herewith I transmit to the department Captain Irvin's three reports of work done by the steam snag-boat Archimedes, during the months of February, March, and April this year, by which it will be seen that 632 snags were removed from the bed of the river, and 7,605 trees felled from its banks, which were taken from a distance of 900 miles, extending from the mouth of the Ohio to 30 miles below Baton Rouge. Also Captain Smith's report of work done by the steam snag-boat Heliopolis, for the months of February and April. That boat removed in two months, from the bed of the Ohio and Mississippi rivers, 313 snags, and felled from their banks 2,240 trees. During the same time that boat removed from the bed of the Arkansas river 183 snags, and felled from its banks 415 trees. The Heliopolis was not at work in March, as she had to change her crew and refit. The total number of snags removed by the two boats from the Ohio and Mississippi rivers, from the 1st of February is 945, and trees felled 9,845.

These boats are now laid up at St. Louis, and will be ready for any service they may be required to perform in a few days' notice. No repairs are necessary of consequence, except one new cylinder to be put into the Heliopolis, which is now ready, and will be put up as soon as practicable. It will also be necessary to recaulk the boats, &c., all of which is now in progress.

I am, sir, very respectfully, your obedient servant,
HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington, D. C.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.
J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 13.

LOUISVILLE, *June* 4, 1838.

SIR: I have the honor to state to the department, that on the 9th of December last, the steam snag-boat Eradicator, with a keel-boat in

tow, left this place for the Great raft in Red river, for the purpose of completing its removal. The steamer Pearl, with a keel-boat in tow, left on the 16th of that month, and the steamboat Laurel, on the 27th of January last, destined to the same service. The Eradicator arrived at the raft on the 22d December. The Pearl on the 1st January, and the Laurel on the 8th of February. The work of removing the raft was resumed by the respective boats on their arrival, and was continued by the Laurel to the 21st of April, by the Eradicator and Pearl to the 1st of May, the period for which the laborers were engaged. On the 7th of March last, the first steamboat was enabled to force her way through the upper section of the raft, and up to the 29th five merchant boats had passed up quite through the raft. On that day the entire remainder of the raft was out, so as to leave a clear passage for boats. Still there remained in the channel a great number of snags, logs, &c., which have since been taken out by the Eradicator. On the 1st of May the navigation through the whole extent of the raft was considered safe, and was navigated by the largest class of boats that trade in that river, with full cargoes, at the rate of seven miles an hour up stream, and twelve down, without damage to the boats. There were two boats lost near the head of the raft by striking snags. The Black Hawk on the 2d, and the Revenue on the 7th April. Those accidents happened before the Eradicator had worked through that part of the river, and earlier than it was safe to risk a heavy laden steamer down stream, with navigators that could not by any means know the river in so short a time after its channel had been opened, consequently were exposed to great danger. The snag on which the Black Hawk struck, was removed two days after the loss of that boat. It was found to be firmly fixed in a perpendicular position, with its roots twenty-three feet below the bottom of the river. The tree was about four feet in diameter, broken off about three feet below the surface of the water, and situated in a current of about five miles an hour. The steamer Revenue had broken a wheel shaft in her passage down the river, some fifty miles above the head of the raft, and was stove by running on shore in consequence of her unmanageable condition, having but one wheel at work. However, there is now no obstruction of a dangerous character in the raft that is known of. I consider the navigation as safe through that part of the river where the raft was formerly located as at any other part of it from forty-five miles above its mouth to the head of steamboat navigation, a distance estimated at 1,150 miles. The former location of the raft occupied 165 miles of that distance. Its removal has extended the navigation of steamboats about 750 miles on the Red river proper. Its tributaries, from the best information I am in possession of, will afford about 600 miles, with but partial improvement in their channels, and may be extended by improvements on the main river and its tributaries some nine hundred miles further, extending the whole line of navigation by the improvement 2,250 miles, passing through as fertile a soil as any on this continent with a less proportion of land which is unfit for cultivation than any tract of the same extent in our country. The climate is well adapted for the cultivation of cotton, the latitude ranging from 32° to 35° north, between the original foot of the raft

and the head of navigation. The lands on the river bottom from the foot of the raft to 100 miles above its head, have been nearly all redeemed from inundation by the removal of the timber from its bed; all of which is now settling with unprecedented rapidity. In that part of the river where the raft was located, there was not a trace of man to be seen from its foot up to Rush island, near the Caddo agency, when the work was commenced in April, 1833, and which is now a continued line of cotton plantations extending to the town of Shreveport, a distance of 115 miles. From that place to the head of the raft, there are many large improvements, and preparations now in progress to put in cultivation a large portion of the land on that part of the river. The land lying between the Red and the Sabine rivers has been thickly settled. There is, perhaps, a settler on every section of land in that whole district of country, covering a tract of ninety miles north and south, and forty miles east and west, lying within the State of Louisiana, which includes the Caddo purchase of the 1st July, 1835. The land lying between the Red river and the Washita, also of about equal extent, and equal in quality, is settling with almost as great rapidity. The State of Arkansas, has its southern boundary at 33° degrees north latitude, which crosses the Red river about fifteen miles due north above the head of the Great raft, and by the meanders of the river about forty-five miles, and has a boundary on the river on the southwest bank of about two hundred miles, on the northeast bank to its northern boundary, some six hundred miles; all of which is settling with a population that must in a very few years produce some two hundred thousand bales of cotton per annum, and an immense amount of supplies of provisions, being in a grain growing country, and equal to any in the United States for raising stock of any kind. Texas has a boundary on the southeast bank of the river of about four hundred miles, which is also as valuable a tract of country as any within the limits of that government, a great portion of which is settled by an industrious and enterprising population.

The advantages to be derived from the removal of the Great raft cannot now be calculated. The government land on that river has been enhanced in value to an immense amount, not less, I should judge, than $15,000,000. The settlers will reap incalculable advantages from the same work. The expenditure for its removal under my superintendency, including the building of the steam snag-boat Eradicator, designed to keep clear new accumulations of obstructions in that part of the river called the raft, has been $311,129 59. It will be necessary to expend some $15,000 a year in that river to work the snag-boat Eradicator, a part of each year, for which service she was constructed, and is admirably well adapted to remove such snags and logs as will from time to time rise from the bed of the river, and cave in from its banks, and to widen the stream at such points as it has been contracted to so narrow a channel as not to afford sufficient room for the drifting trees that float down during the high freshets in that river. For that service I hope Congress will make provision from time to time, and in time to admit of the work being prosecuted at the most advantageous season of the year, which is from the 1st of December to the 31st of May. During the summer and fall months,

the water is frequently too low to operate with a boat to advantage, and the work of too unhealthy a character to labor in that climate during that part of the year, when men will be subject to the prevailing diseases of the country, and annoyance from the immense swarms of mosquitoes that abound in the valley of that river. Four years will, in my opinion, be as long as will be necessary to keep up the improvement. In that time the channel of the river will probably have returned to its former width, by the operation of the current on its bottom and shores, which are both wearing away continually; and by the assistance of the snag-boat to remove the logs and trees that accumulate in its bed, and clear away the narrowest points, the navigation will be kept open without interruption. There is also some work necessary to be done on several of the bayous in the upper section of the raft, to secure the water in its original channel, and prevent the enlargement to such an extent as to endanger the navigation of the river by driving more water from it than could be spared from its volume in a low stage. I beg leave respectfully, to recommend that provision be also made for removing the snags from the bed of the river above the raft as high up as Fort Towson. That work is of great importance to the navigation of the river, and can be done at a small expense by the snag-boat Eradicator. The master of that boat can run up from the raft when the water is at the most favorable stages, and execute the necessary work, with but small additional expense to the operations in the raft region. There are, however, some parts of that river that flow through the banks, that cave in to some extent, and keep up the supply of snags in the river, and large drifting trees in its currents. The latter are liable to lodge at the narrow points in the raft, and give much more labor to remove them than would be required for felling the tender on the banks, and cutting it into pieces that would float down without interrupting the navigation, at the same time prevent the accumulation of snags at those points. For the execution of that work, it will require the labor of about fifty men six months, at an expense of about $10,000. For both these objects I would recommend an appropriation of $15,000, in addition to the sum necessary to work the snag-boat in the raft.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE, *Seperintendent.*

General C. GRATIOT,
Chief Engineer.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT.
Col. Corps Topographical Engineers.

No. 14.

UNITED STATES SNAG-BOAT HELIOPOLIS,
Mississipi river, November 10, 1838.

(Ohio and Mississippi between Louisville and New Orleans.)

SIR: In conformity with your instructions, I have the honor to transmit herewith a report of the condition of the navigation of the Ohio and Missisippi rivers from Lousville to New Orleans on the 30th of September last, and the progress made in its improvement during the current year.

The steam snag-boat "Archimedes," was rebuilt and commenced operations in the month of December last. This is a very efficient boat, and works to the best advantage.

By reference to the monthly reports of the masters of the snag-boats Heliopolis and Archimedes, it will be seen that three thousand four hundred and two snags have been removed from the bed of the Ohio and Mississippi rivers, and that twelve thousand one hundred and twenty-five trees have been felled from the caving-in banks of the latter during the year ending the 30th of September, 1838.

The steam snag-boat Heliopolis continued her operations from the 1st of October, 1837, to the 4th of May last, excepting a short time necessary to refit boat and engines, which was done at Louisville, Kentucky, and was laid up at St. Louis from the 4th of May to the 1st of September, during which time all the requisite repairs to boat, boilers, and engines, were made.

The new snag-boat Archimedes worked from December to the 2d of May, 1838, and was then laid up at St. Louis, where all the necessary repairs were also made. She left St. Louis in company with the Heliopolis on the 1st of September last, and commenced operations in the Ohio river near the mouth of the Tennessee river, (the water being too low to admit of her working above that point.) The two boats have removed, during the month of September last, from fifty miles of the Ohio river, and two hundred miles of the Mississipi below its confluence with the Ohio, nine hundred and fifty-nine snags, which has made a great improvement to that part of the Mississippi. Still there are yet many dangerous obstructions at the extreme low stage of water that now exists, being form five to six feet below any fall of water since the autumn of 1830. The obstructions alluded to, that remain in the upper part of the Mississippi, next below the mouth of the Ohio, consists of logs and roots lying on the bottom of the river, many of which cannot be removed in consequence of the water passing over them without showing by brakers where they lie. Very nearly all those that leave a breaker on the water, can be removed by the snag-boats when in their vicinity; a large number of the snags removed in September last were of that character, but the water had not fallen to its present low stage by about three feet until since that time, and the number of snags of that character, and such as will be dangerous at a higher stage, are so numerous in all that part of the river below where the boats are now operating near the mouth of White river that I deem it of greater importance to the navigation to continue to

work down the river, removing all snags and logs that can be seen, than to run up to remove such as are left behind, which will not be at all dangerous when the water has risen some six feet, and which, in all probability, will take place in a few days hence. I may here observe, that in my opinion the navigation of the Mississippi river will be dangerous at its extreme low stages of water for many years yet to come. But when it is some ten feet above extreme low-water mark, which is the case in the driest seasons about nine months of the year, (and has been throughout the whole year for the last seven years,) there will be no danger to be apprehended from snags, unless boats are imprudently run too close along the shores.

The two snag-boats are capable of clearing out the annual accumulation each year, and will, in all probability, get through all that part of the river during the present year where the snags are the most dangerous. Before the water rises, I will have removed many hundreds of logs that have not been seen above water, or by their breakers, since the fall of 1830. And should the next year's fall of water be as low as this now is, the two boats now at work will be enabled to remove very nearly all that can be taken out during the season, besides taking away those that may accumulate in the next spring freshets.

Last year there were but very few snags to be seen on the river in its whole course from New Orleans to the Ohio, until after the water had fallen some twenty-five to thirty feet; but since it has become low, there are a great number to be seen. At some points they are numerous; still few of them are dangerous, compared to such as were in the river previous to the removal of the old standing sawyers and planters by the snag-boats, and at the present time there are but very few compared to the number that existed ten years ago. And for the first four hundred miles below the mouth of the Ohio river, where the boats have worked to in the last two months, there are none, except such as lie very low and were not visible when the snag-boats worked in their vicinity. For the whole number of snags removed by the snag-boats since the 19th of August, 1829, (see annual reports from that time to the present.) They would be herein stated, but for want of the copies of the reports retained by me which are in Louisville, and my several duties at this time has made it necessary for me to make out this report on the river.

There has been no work done in the Ohio river during the last year, ending the 30th of September last, except by the snag-boats in the month of April. All the snags that were visible above water at the stage of the river at the time were removed. There still remained many logs lying on its bottom that are a great disadvantage to the navigation at extreme low water, but none in the way when the river is a few feet above low-water mark.

The river has been much lower during the present autumn than at any time since 1830, and at many bars, where there have not been dams thrown up to contract the water, it has been as low as eighteen to twenty inches of water in the best channel; but where dams have been built, there has not been less than three feet, and were the dams repaired and finished to the extent contemplated, there would undoubtedly be four feet depth of water in the channel. As a proof of

that fact, the dams at the Three-sisters island, fifteen miles above the Cumberland river, were finished; and at that place there has not been less than four feet at the lowest stage this season. In my opinion, the propriety of continuing that work has been thoroughly tested by the depth of water found at all of the dams this year. Those dams, to wit, at Cumberland, Three Sisters, Three-mile island, Scuffletown, and French island, were formerly decidedly the shoalest and most difficult bars to pass in the Ohio river; now they can all be passed with but little loss of time.

Preparations were made as soon as practicable after the appropriations made by the last session of Congress had passed to resume the work on the dams in the Ohio; but the late period at which they were made, rendered it impossible to take advantage of the low water of the summer to execute any part of that work, and the force designed for that operation did not get to work until October, when they commenced to complete the work at the dam near the head of Cumberland island, and will probably finish that dam before the water rises; which, when done, will be a valuable and permanent improvement of the shoals at the head and foot of that island.

I beg leave to suggest that ample appropriations be made for the improvement of the Ohio river by wing-dams from Louisville to the Mississippi, and that the superintendency be placed in charge of the same person who may be superintending the improvement of the Ohio river above the falls, or that a separate superintendent be appointed to execute that work. I would also state that it is not in my power to carry on the work on the Mississippi, Red, and Arkansas rivers, with Ohio, and do justice to all of those works. I therefore must beg to be relieved from the Ohio, which differs so materially from that of the other rivers, that it requries much more of my time than can be spared from the other rivers.

To carry on the several operations to advantage during the year 1839, and first and second quarters of 1840, it will require an appropriation of $145000, an estimate for which is herewith submitted.

I am, sir, very respectfully your obedient servant,

HENRY M. SHREVE, *Sup't.*

General C. GRATIOT, *Chief Engineer.*

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 4, 1856.

A true copy from the original on file in this office.

J. J. ABERT,
Colonel Corps of Topographical Engineers.

No. 15.

ARKANSAS RIVER.

UNITED STATES SNAG-BOAT HELIOPOLIS,
Mississippi River, November 10, 1838.

SIR: In conformity with your instructions, I have the honor to transmit herewith a report of the continuation of the improvement of

the Arkansas river during the current year ending the 30th of September last, with the progress made in that work.

The steam snag-boat "Eradicator" continued to work in that river during the month of October, when she proceeded to Louisville to fit out for the removal of the great raft in Red river. The steamer "Java," with two snag-boats worked by hand, continued the work from the 1st of October to the 15th of April. The steam snag-boat "H. M. Shreve" commenced operations in the Arkansas in December, and continued to work to the 20th of April. The steam snag-boat Heliopolis worked in that river from the 9th to the 22d of February, inclusive, removing in that time 191 snags and felling 307 trees from the caving-in banks. The "H. M. Shreve" removed from the bed of the river 1,211 snags and felled from its caving-in banks 1,572 trees. The "Java" and hand snag-boats removed from the bed of the river 229 snags and cut off the sand bars and shores 12,068 logs and snags, and felled from the caving-in banks of the river 68,763 trees. The Eradicator removed from the bed of the river 26 snags, cut off the bars and shores 116 snags and logs, and felled from the caving-in banks 555 trees. (The Eradicator's crew was very unhealthy, and could not work the boat with the part of the crew that was not sick, during the greater part of the month of October.) By reference to the monthly reports of the captains of boats, it will be seen that the aggregate number of snags removed by the boats were 1,657, the logs cut from off the bars and shores were 12,184, and the trees felled from the caving-in banks were 71,197. That work was confined to the river between its mouth and Little Rock. The snags removed from the bed, and logs and snags cut away from the bars and shores, produced a great improvement in the navigation of that river; the trees felled from the caving-in banks will be a preventive of new accumulations of snags. At a medium stage of water there were but few snags to be seen when the operations were closed, in the month of April last. Still there yet remained much to be done in that river to render its navigation safe at a low stage of water. The character of the river is different from most of those of the southwest that have alluvial bottoms and caving-in banks; its depth of water being much less, consequently every tree that falls into it and does not drift off with its current forms an obstruction. It will require great labor to render its navigation safe at low water. Still it has been greatly benefited at low water, and rendered comparatively safe at a medium or higher stage. It is contemplated this year to work the machine-boats which accompanied the "Java" last year from November to June; the "H. M. Shreve" from the month of December to the 20th of April; the Archimedes from the 1st of February to the 30th of May. I would beg leave to recommend a sufficient appropriation for constructing a snag-boat for the improvement of the Arkansas river, to be worked in it at all seasons, when the stage of water and health of crews will admit. By that means advantage may be taken of the different stages of water and the work carried on to much better advantage than by boats belonging to the other rivers, that can only be spared from the works to which they belong when they are suspended for the time.

To enable the superintendent to prosecute the work in the Arkan-

sas river during the year 1839, the accompanying estimate is respectfully submitted, which is as small as can be applied to advantage.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

General C. GRATIOT, *Chief Engineer, Washington.*

BUREAU TOPOGRAPHICAL ENGINEERS, *Decemcer* 6, 1856.

A true copy of the original on file in this office.

No. 16.

ST. LOUIS, *December* 4, 1838.

SIR: I have to acknowledge the receipt of department circular, dated November, 1838, which came to hand this day, requiring me to report to the department at the earliest favorable day in compliance with the accompanying letter of the Secretary of the Treasury relating to steamboats and steam engines in the employment of the War Department.

In compliance with which I transmit the following report of boats and engines in my charge.

The steam snag-boat Heliopolis was built by Messrs. Tellon & Himes, at New Albany, State of Indiana, in 1829; is a twin or double boat, each hull 112 feet long, 17 feet breadth of beam, 8½ feet depth of hold; commenced operations by removing snags from the head of the Mississippi river on the 29th of August, 1829.

The engine on board of that boat was constructed by Mr. Anthony Harkness, of Cincinnati, Ohio. A double engine with two cylinders; two sets of pumps; six boilers, 18 feet long, 40 inches diameter, two flues in each; the boilers set upon the two furnaces, one on each hull of the twin-boat, with three boilers each.

High pressure, carrying ninety pounds pressure to the square inch, one hundred and twenty horse power.

The Heliopolis was rebuilt in 1837 by Messrs. Tellon & Himes, of New Albany, Indiana, and was enlarged in her hulls to 120 feet long; 17½ feet wide, and 8 feet hold; has the same engine on board; no accident has occurred.

The Heliopolis is now commanded by Captain Samuel Smith. Engineer, Henry Hunt; engaged in removing snags from the bed of the Mississippi river.

The steam snag-boat Archimedes was built by Mr. John Murry, of Louisville, Kentucky, in 1837; commenced operations in the Ohio and Mississippi rivers in December of that year; is a twin-boat, with two hulls each 125 feet long, 17 feet beam, and 7 feet 6 inches depth of hold; is commanded by Captain Charles Irvin; engaged in removing snags from the Mississippi river. The engineer is Robert Moorhead.

The steam engine of the Archimedes is of the same description as that on board of the Heliopolis, only that it has but four boilers. It

was constructed by Messrs. Glover, McDueal & Co., of Louisville, Kentucky, in 1837; no accident has occurred to that engine of 80 horse power.

The steamboat Eradicator was constructed by Messrs. Tellon & Himes, at New Albany, Indiana, in 1836. That boat is 120 feet long, 30 feet breadth of beam, and 7 feet 6 inches depth of hold; commanded by Captain Abram Tyson; Lewis Clareton, engineer; employed in removing new obstructions from that part of Red river commonly called the "Grate-raft." The steam engine on board the Eradicator is of the same kind as those described on board of the Heliopolis and Archimedes, with four boilers in two furnaces; built by Messrs. Betty, Curry & Co., at Louisville, Kentucky, in 1836; no accident has occurred to this engine.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

General C. GRATIOT,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Topographical Engineers.

No. 17.

LOUISVILLE, *January* 13, 1839.

SIR: I have the honor to acknowledge the receipt of your letter dated the 4th instant, advising me of the receipt of my letter of the 25th ultimo recommending the building of a snag-boat for the Arkansas river, by which I am required to report in detail the circumstances which render such a boat necessary in addition to those now on the western rivers; a full description of the boat, with a detailed estimate of the cost and the probable time it will require to put her in operation, &c.

In reply I have to state, first, there is no boat belonging to that river, and the only means in my possession to execute the work on the Arkansas is by two snag-boats worked by hand, which are only calculated to remove logs that lie in shallow water and close along shore. They are now at work in that river, and are commonly called machine boats, and are very efficient in parts of the work, but by no means capable of removing a large snag or tree from the main channel of the river.

The steam snag-boat Archimedes will go from the Mississippi river into the Arkansas and commence operations on the first of next month, (February,) where she will continue so long as there is suffi-

cient water for her to operate, probably to the 1st of June, which is all the means in my power to apply to the Arkansas this season.

Secondly. There are but three steam snag-boats on the western waters at my disposal, and one under the charge of Lieutenant John Sanders. Two of those under my charge were built from the appropriation for the Ohio and Mississippi, and the Ohio, Missouri, and Mississippi rivers—the Heliopolis and Archimedes. They are now operating on the Mississippi river, below the mouth of the Ohio. The Heliopolis will continue in the Mississippi river up to about the 15th of March, when it is contemplated she will commence operations on the Missouri. The Archimedes will operate as before stated. The Eradicator was built for the Red river, and to be worked in the Arkansas after that service was done; she will be required on the Red river during the season of the year, where she can be worked for four or five years to come. The small steam snag-boat built by Lieutenant John Sanders. for the Ohio river above Louisville, was worked in the Arkansas river last year from December to April. It was contemplated to have worked her in the same service this season from November to March, inclusive, but the stage of water has been such as to render that part of my plan impracticable. The boat cannot be taken over the falls, and is too wide to pass through the canal. The season is now so far advanced that the boat cannot work in the Arkansas this season. She requires extensive repairs, which cannot be done where she now lies, but requires to be taken into a dock below the falls and receive a new bottom, which will consume so much time that nothing can be done with her. Lieutenant Sanders requires her in the Ohio by the 1st of April. She is too small and much too lightly built to execute the heavy work found necessary to do in the Arkansas river.

Thirdly. By having a boat expressly for the Arkansas river, such boat can take the advantage of the different stages of the water to work the different sections of the river. That part of it between Little Rock and Fort Smith can only be operated on by the snag-boat when the water is up to about a medium stage. A boat could pass up with the rises of water, and drop down as it falls, and be able to work in her passage up and down, and not be liable to lose time by being caught in the shallow parts of the river to wait for a rise, but be employed to advantage as long as the water kept up sufficiently high for a boat to operate, which will be a large portion of the year, as she can work when there are four feet of water in the river; and at all times when the water is too low for the steam snag-boat, the crew can be employed on the machine boats, and no time will be lost by the laborers, and the machine boats at low water will take out many dangerous logs and roots that cannot be found when the water is high enough for the steam snag-boat to work.

Fourthly. It is obvious to every man acquainted with the character of the Arkansas river that there is quite as much work necessary to be done in that river as a boat can possibly execute in the time that she would probably last, being assisted by machine boats in low water, and laborers to clear the timber from the bars, banks, shores, &c. It is also evident that the other boats now in use will have suffi-

cient employment for many years to come in keeping down new accumulations in the Mississippi and Red river, and removing the timber from the bed of the Missouri—a very extensive work not yet commenced; and if I can be permitted to give my ideas on the subject, I am decidedly of the opinion that, for the interest of the government and country, a boat should also be immediately built for the Missouri and upper Mississippi rivers, which, together with those now in use, would find ample employment as long as they will last. Another reason for building a boat for the Arkansas river is, that none of the boats now on the river are of sufficiently light draft of water for working in that river to advantage. In regard to economy in money and time, there is a large balance in favor of building the boat in question.

For a particular description of the boat contemplated, I beg leave to refer you to the model of the snag-boat in the Patent Office, and to the contracts on file at the department for building the steam snag-boats Heliopolis and Archimedes. She will be precisely on the same plan, with one foot more beam to each of the hulls of the twin boats, and the model something fuller, the object of which will be to obtain as light a draft of water as possible and retain the required strength of frame. There is no alteration contemplated in the plan of the boat, consequently nothing to risk as relates to the efficiency of the boat when completed. It will require about six months to build and fit out the boat after the contracts are authorized to be made.

The accompanying estimate is as much in detail as it can be made out, and will be very near the cost of the boat and machinery, exclusive of the patent right for the boat, which I hope will not be charged, as I anticipate selling the right of using the snag-boat to the government, and shall be in Washington on that business in a few days. Previous to my leaving this place, however, I shall make conditional contracts for the contemplated boat, so that no time may be lost by my absence should the department determine to build.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE.
Superintendent.

Col. J. G. TOTTEN,
Chief Engineer, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 4, 1856.

A true copy from the original on file in this office.

J. J. ABERT,
Colonel Corps Top. Engineers.

No. 18.

WASHINGTON, *February* 14, 1839.

SIR: Permit me to address you on the subject of my claim for the invention of the snag-boat, its usefulness to the government, &c.

I entered on the superintendence of the improvement of the Ohio

and Mississippi rivers, on the 2d of January, 1827. A contract then existed between the Department of War and Mr. John Bruce. I was instructed by the chief engineer to examine Mr. Bruce's machinery, &c., and report to the department on the probability of his (Mr. Bruce) complying with the contract. On making the examination, I found that there was no machinery by which the snags in the Mississippi river could possibly be taken out of the channel, and reported accordingly. The contract alluded to was annulled; I was then directed to commence the work by hired labor, which was done in the summer of 1827. I had no machinery or apparatus to execute the work. I then invented and built what is called the wheel or machine boat now in use under my charge in the Arkansas river, also used by Lieutenant John Sanders, on the Ohio river, above the falls of that river, and by Captain R. E. Lee at the rapids of the Mississippi.

They are built on two scows, sixty feet long, nine feet wide, and thirty inches deep, framed together by strong beams running across the two boats, which are nine feet apart, with an open space from the middle of the boat forward. There is a frame raised some fifteen feet high on each boat, on which a cast iron shaft rests, with a wheel on each end of it of sixteen feet in diameter, with a groove or score, on the periphery of the wheel, five inches wide, in which a line is passed six times around, and led to a windlass on the deck. A chain made of one and a fourth inch iron works on the last iron shaft, the lower end of which is fastened around a snag, log, or rock, which is lifted on the deck of the boat, with great power. Four men, at the windlass on deck, can raise forty tons weight.

In 1828 I was authorized by the department, to construct a steam snag-boat, which was built, and commenced operations in August, 1829. The same windlass of cast iron, with the wheels and chains enlarged to such dimensions as to be capable of lifting a weight of two hundred tons, was applied to the steamboat, and the power got from the main shaft of the engine, instead of the windlass on deck. There was, however, added to the steam snag-boat, another and very important application of power, which was new in its construction and application, consisting of a heavy beam connecting the bows of the twin boats, so fixed as to break off snags or trees of any size ever yet met with in the Mississippi. The power is gotten by the impetus of the boat running at the rate of eight miles per hour and striking the snag. That part of the machine is indespensable; with it, many hundred snags have been removed with great dispatch that could not have been taken out by any other means yet known to me. That beam is also used to trim tops of heavy trees, to place them in a condition to be thrown on deck by the windlass. That part of the machine is wholly original with myself. The arrangement of the windlass, as described, is also of my own invention, and no machine of the kind, or similar to it, was ever before used, nor has it since been, with the exception of those named; and the plan for their construction was given by me at the request of the chief engineer.

There are many other minor parts of the machine of indispensable utility, which are also new in their application, and of my invention. I may further add that the combination of the whole in one great and

powerful machine are new in their application to the service for which they are used. I have not heard of anything, used for any purpose whatever, being in existence in any part of the world which is in anywise similar to the snag-boat in question.

I have no hesitation in claiming the invention as my own, and, if necessary, of producing the testimony of many of the most respectable citizens of the west to prove the fact.

The usefulness of the snag-boat to the improvement of the navigation of the great western rivers has been proved by its operations for the last nine years. What has been done in the Mississippi and Red rivers must be acknowledged by all who are acquainted with the parts, to be of great value to the government.

Major Delafield's report of 1830, which will be found in Ex. Doc. of 1830–'31, 2d Session, 21st Cong. Doc. No. 9, p. 8, will give a tolerably correct view of the perfection, efficiency, and value of the machine. Captain A. H. Bowman's reports from year to year, for several years back, both on the progress of the improvement in the Mississippi and Red rivers, will also enable you to judge what the value of the services rendered by that boat has been heretofore. Captain Bowman's report on the work in Red river will be found in the Ex. Doc. of the last session of Congress.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE.

Colonel J. G. TOTTEN,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 4, 1856.

A true copy from the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 19.

ST. LOUIS, *June* 7, 1839.

SIR: I have the honor herewith to transmit to the department monthly reports of the work done in the Arkansas river, during the present season of operations, showing in detail each day's work by the men under the command of Captain William Cooper, with a machine boat and a party of men working on shore, clearing the banks of the river, and by the snag-boat "Archimides," Captain Charles Irwin.

By referring to the reports of Captain Cooper it will be seen that 23,241 trees have been felled from off the caving banks, 16,952 logs cut off that had fallen under the banks, and 761 snags removed from the channel; and by Captain Irwin's report it appears that 9,404 trees were felled from the banks, and 1,409 snags removed, producing an aggregate of 32,645 trees felled from off the caving banks,

17,103 logs cut from under the banks, and 2,170 snags removed from the bed of the river.

In Captain Irwin's report of work for the month of May you will observe his remark relative to a flat-boat sunk on the 25th, and towed down to Helena, nine miles. The boat was laden with tobacco, and was run foul of by the Archimides, both being under way. The flat-boat had pulled out from behind a point of land, and was close aboard of the Archimides before she was seen. The engines were set back and every exertion made to save the boat, but she came in contact with the flat and stove in one of her sides, so as to fill her with water. I have not heard from the owners of the tobacco. They will probably claim damages for the loss on the cargo. Had it have been a merchant boat, no damages could be recovered; such, however, has been the decision of the courts in a number of similar cases. If any damages are claimed in this case, I shall forthwith advise the department of the same, and be governed by your instructions, &c.

The Archimides has arrived, her men all paid off, the repairs necessary to be made are in progress, and a crew being shipped for the Missouri river, where that boat will be despatched as soon as possible.

The accounts for disbursements are in preparation, and will be forthcoming in a few days for the Arkansas, Ohio, Mississippi, Red, and Missouri rivers.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Colonel JOSEPH G. TOTTEN,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 20.

ST. LOUIS, *June* 7, 1839.

SIR: Herewith I have the honor to transmit to the department reports of work done by the steam snag-boats Heliopolis and Archimedes in the Ohio and Mississippi rivers, from Louisville to New Orleans. The Heliopolis for February and up to the 15th March, at which time that boat commenced the improvement of the Missouri river, and the Archimedes for December and January last, when the latter commenced the work in the Arkansas river.

By reference to the reports it will be seen that during the time specified in the reports there were 967 trees felled from the caving banks of the Mississippi river, and 1,196 snags removed from its bed, which, together with the number removed from the 1st of September to the date of the reports herewith transmitted, it appears that 1,103 trees

have been felled from the banks, and 5,056 snags removed from the channel of the river during the season's work.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE, *Sup't.*

Colonel JOSEPH G. TOTTEN,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 21.

LOUISVILLE, *December* 23, 1839.

SIR: I have the honor to report to the department the operations of the snag-boats Heliopolis and Archimedes in the Ohio and Mississippi rivers, from Louisville to New Orleans, during the last current year.

On the 1st day of October the snag-boats were at work at island No. 37, and proceeded down the river from that place in company, removing all the snags that could be seen, until the 7th of November; on that day I went on board of the Heliopolis, and proceeded down to the mouth of Red river, under an order from the department, dated 4th of October, 1838, requiring me to go to that place to direct the operations of removing a sandbar, reported to have been formed at the mouth of that river, completely obstructing the navigation of steamboats. On my arrival at that point on the 12th of November, I found seven feet of water over the bar, and no obstructions to the entrance into Red river. After making a careful examination of the bar and mouth of the bayou Atchaffalia, which was reported to the department under date of the 13th of November, 1838, I again proceeded up the Mississippi river, and the Heliopolis resumed her operations in the Mississippi on the same day, (12th November,) and continued to work up the river, removing all the snags that lay in the low water channel, until she met the Archimedes, near Princeton, on the 10th of January, 1839. The Archimedes had worked down the river from island No. 66, where the Heliopolis left her on the 7th of November, and removed all the snags to be seen in her progress. After meeting on the 10th of January, they again proceeded down the river and removed such snags as the Heliopolis had left on working up through the low water channel, until they proceeded as low as Coal creek, 22 miles above Natchez. On the 23d of January, the Archimedes returned up the river, and removed such snags as were to be got at in the island chutes through which there was not sufficient water to work in. The boats passed down; she (the Archimedes) arrived at the mouth of the Arkansas river on the 4th February, and commenced operations in that river. The Heliopolis continued to work down the

river until the 30th of January, when she commenced her return up the river from a point 4 miles above Baton Rouge and 125 miles above New Orleans, there being no snags that endanger the passage of boats in the lower part of the river. The Heliopolis continued to work up the river until the 12th of March, when she proceeded from the foot of Wolf island, 25 miles below the Ohio, to St. Louis, where she had been ordered, and arrived at that place on the 15th, and proceeded from that place on the 16th to the Missouri river.

By referring to the monthly reports of the captains of the boats, it will be seen that 4,097 snags were removed from the bed of the Mississippi river, and 967 trees felled from its caving-in banks. From the 1st of October, 1838 to the 12th of March, 1839, during great part of that time the Mississippi was at a very unusual low stage, which enabled the snag-boats to work to much greater advantage than they had done in any previous year, the water being about six feet lower than it had been at any time since 1830, consequently much greater service was done the navigation than in any previous year since the commencement of that work.

My duties have been such this fall as to prevent me from passing down the Mississippi river below the Ohio; I am not therefore aware of the precise condition of the river at the present time, but have no doubt that near or quite all the accumulation of the last year will be removed by the boats during the approaching winter. With the balance of funds now available for that work, they will be able to work to the 1st of April or about that time.

An estimate of funds required for that work for 1840 is herewith respectfully submitted, amounting to $112,000, which I hope will be approved by the department and estimated for accordingly.

I must beg leave to suggest to the department the propriety of calling on Congress for an appropriation to be made at the present session to pay me a fair compensation for the patent right to the snag-boat; that right has been vested in me by the laws of Congress, and does unquestionably belong to me as the inventor of that important and valuable machine, of which the United States has had the exclusive benefit for ten years. What those boats have done is well known to the department and many members of Congress, and therefore requires no comment on the subject for me, further than to claim my right, and insist on the government paying me a just reward for the use of the patent. I hope the subject will be taken into consideration by the department, and that a call will be made on Congress accordingly. I herewith transmit a statement of the time each boat of this kind has been in use by the United States, from which an estimate may be made of the benefits which the government has derived from them, and some price set on the value of the patent for the ensuing time yet to come. Since my last year's report, nothing has been done in the Ohio river below the falls; the dams at the several points where they were constructed stand in about the same positions as they did last fall. I would earnestly recommend appropriations to be made to continue the work on that river, the commerce of which is very much interrupted in consequence of the shoals that occur at many points below the falls. All of the most deficient of them can evidently be improved on the

plan heretofore pursued if funds were appropriated to prosecute that work. I have no doubt but four feet of water can be obtained from Louisville to the Mississippi river by carrying out that plan of operations, the value of which would be incalculable to the trade of that river, which has been almost totally suspended in the low water of this and the last year. I would therefore earnestly recommend that it should be continued, and that the work be placed in the hands of an efficient officer to superintend it, and that I may be relieved from that duty, as the other works under my charge are quite as much as I can do justice to.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 22.

ST. LOUIS, *Missouri, October* 31, 1840.

SIR: Agreeably to your request I herewith proceed to report the condition of the improvement of the navigation of the Ohio and Mississippi rivers from Louisville to New Orleans on the 30th September, 1840.

The snag-boat Archimedes left St. Louis on the 3d of December, 1839, and proceeded to the mouth of the Ohio river, where she arrived and commenced operations on the Mississippi river below the Ohio river on the 11th of that month, having been detained in her passage down from St. Louis by a low stage of water. That boat continued to work in the Mississippi river until the 18th of January, 1840, when she proceeded to the Arkansas river. During the time that boat remained in the Mississippi river she removed from its channel 300 snags and felled from its caving banks 2,966 trees. The latter work was done by the crew of the Archimedes at times when the drifting ice was so heavy in the river that it was impracticable to remove snags from its bed.

The snag-boat Heliopolis left New Albany, Indiana, where she had been repaired, on the 14th December, 1839, and proceeded to the mouth of the Ohio, where she arrived on the 22d, being detained by a low stage of water in the Ohio river, and, when arriving in the Mississippi river, found the drifting ice so heavy as to prevent her from working until the 28th, when nine snags were removed. The ice was then again so heavy as to prevent the boat from working until the 6th of January, 1840. The Heliopolis continued to work in the Mississippi river below the Ohio river until the 31st March. During that time there were 808 snags removed from the bed of that river, and 6,718 trees felled from off its caving banks. The latter work was done

by the crew of the boat at such times as the ice was too heavy or the water too high to work the boat at removing snags. By a reference to the monthly reports of the captains of those snag-boats, the Archimedes and Heliopolis, it will be seen that the aggregate number of snags removed during the time they worked was 1,808, and the number of trees felled from the banks was 9,684.

The result of the above enumerated works placed the navigation of that river in a safer condition than it had been at any previous time, which will be seen by a reference to Captain R. E. Lee's report after his examination of that river last winter. The snags, or nearly all of them that he reported, were removed by the snag-boats after he passed down the river on his tour of examination. The universal high freshets of the last spring and summer have doubtless caused the banks to cave in extremely, and brought many snags into the Mississippi from its numerous tributaries, so that the accumulation of the last year must have been greater than usual. I would therefore respectfully beg leave to recommend an appropriation by the next session of Congress, as per the accompanying estimate, amounting to $37,000, to continue the improvement of the Ohio and Mississippi rivers, which will if longer delayed be attended with much greater expense to the government, by the continued accumulation and the decay of the snag-boats while lying idle for want of means to operate with, and the loss of property to the navigation of the river, must amount to a very great sum.

I must beg leave respectfully to call the attention of the department to my claim for the invention of the snag-boat, which has been patented to me on the 12th of September, 1838, investing in me the exclusive privilege of the use of that invention, which is sanctioned by the Constitution and conformable to the laws of Congress. I therefore see no reason why I should not be paid a fair compensation for the use of the machine by the government. I therefore hope that some provision will be made at the approaching session of Congress to do me justice, which is all I ask.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE.

Colonel Jos. G. TOTTEN,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 23.

ST. LOUIS, MISSOURI, *June* 12, 1839.

SIR: I have the honor to inform the department that the work of removing the raft formed in the former location of the Great raft in Red river was resumed in November last. The steam snag-boat "Eradicator," accompanied by a keel-boat in tow and 74 men, officers and mechanics, under the command of Captain Abram Tyson, pro-

ceeded from the mouth of the Ohio river on the 24th of November last, and arrived at the raft, with the keel-boat and laborers, on the 16th of December, when the work commenced. The snag-boat "Eradicator" was left below the rapids of Red river, the water being too low for that boat to cross the shoal at that place. She, however, arrived at the raft in January, and on the 15th of February the raft (2,300 yards in length) that had formed in July last was removed and the navigation open. The force employed then proceeded to open and widen the channel, take out the logs and snags which were in the channel, and place the river, so far as practicable, in a situation to prevent a reformation of timber in its bed. That operation was continued up to the 15th of April, when an unusual high freshet in the river brought down a heavy run of timber and formed a new raft of 2,150 yards in the same place from which the raft had been removed during the winter. I arrived at the raft at that time and found the navigation entirely obstructed. Two steamboats in the river above the raft, bound down with cargoes of cotton, and five boats below, bound up with full cargoes for the country above the raft, and government stores for Fort Towson, besides three steamboats that had full cargoes for the country above, that had stored their freights at Shreveport, 45 miles below the raft, and returned to New Orleans.

The available funds had, on my arrival at the raft, all been expended and exceeded by a considerable amount. Deeming the opening of navigation of great importance, both to the government and to the people, I was induced to make a representation of the state of the funds appropriated by Congress to the planters in the vicinity of Washington, Hempstead county, State of Arkansas, and to propose to continue the operation at the raft up to the 1st of June, on condition that a loan could be made by them to defray the expense, when the following application was made to the branch of the Real Estate Bank at Washington:

WASHINGTON, ARKANSAS, *April* 16, 1839.

To the PRESIDENT and DIRECTORS
Branch Real Estate Bank of Arkansas, Washington.

GENTLEMEN: On my arrival at this place yesterday, I was informed that there was a late reformation of timber near the head of the Great raft in Red river, obstructing the channel nearly one mile in extent, and being anxious to remove that obstruction before the force now employed by the government under my charge is withdrawn, I am induced to apply through you to the people whose interest it is to have that work completed, for a sum of money sufficient to work that force up to the first day of June next. All the available funds heretofore appropriated by Congress, for removal of the raft, having been expended, as will be obvious from the following extract of a letter from the chief engineer.

ENGINEER DEPARTMENT,
Washington, March 14, 1839.

SIR: No appropriations were made by Congress at the last session for any of the works under your charge. The operations must, there-

fore, be conducted in reference to funds still available from previous appropriations, of which the following list exhibits the amount now in the treasury, and in the hands of the agent on the 31st of December, 1838:

Red river.—In treasury, nothing; in agent's hands, $7,815 88. You will, of course, be sure not to transcend the amounts available in any of your operations.

JOS. G. TOTTEN,
Chief Engineer.

Captain H. M. SHREVE,
Superintendent, &c. St. Louis, Missouri.

To continue the operations, with the force now at work in the raft, till the 1st of June, will require at least seven thousand one hundred and forty-seven dollars fifty cents (7,147 50.) If that sum can be furnished by the citizens interested, I will take the responsibility of continuing the operations to the time for which the laborers now at work in the raft are employed (1st of June next.) But under the express condition that the parties making such advance take the entire responsibility of being reimbursed by Congress, my engaging only to apply the funds to the removal of the raft, and calling on the Engineer department for appropriations sufficient to repay the amount at as early a day as such appropriation can be obtained, but not being liable on my own responsibility, in any shape, for the repayment of the fund, except as agent of the government as hereinbefore expressed.

I am, gentlemen, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

On the foregoing application, I obtained from the Branch of the Real Estate Bank at Washington, Arkansas, the sum of seven thousand one hundred and fifty dollars, ($7,150,) which was applied to the work designated. The late accumulation of raft (which proved to be 2,150 yards in length before the drifting timber ceased to flow down the river,) was removed, and the navigation was opened and free from timber by the 4th of May. The force employed continued the work of opening the width of the river to the 21st of that month, when they proceeded to this place, where they arrived on the first day of June inst., and were discharged and paid agreeably to contract with them. On settling the accounts for the work during the season, since the 31st December, 1838, as per abstract dated 12th June, 1839, the expenditure has been $18,985 03¾. The available funds at that time amounted to $7,815 88¼; the amount received from the Real Estate Bank, Washington, Arkansas, $7,150, making an aggregate sum of $14,965 88¼, which leaves a balance due me of $4,019 15¼, which is the amount I have exceeded the available fund from former appropriations and the loan from the people of Arkansas, and which, under the existing circumstances, was not in my power to avoid.

A further appropriation was anticipated, at the last session, for the continuance of that work, and from the great importance and value of the improvement, and the manner in which it had been brought be-

fore Congress by the Secretary of War, it was believed that funds would have been appropriated. I was advised, however, by the Chief Engineer, under date of the 14th of March, that no appropriation had been made. That advice was received by me about the 25th March, at St. Louis, Missouri, when I left for the raft as soon as practicable; but before my arrival the available fund was exceeded by the amount above stated, $4,019 15½. However, from the great benefits arising from the removal of that formidable obstruction, I doubt not but my error will be excused by the government, and appropriations be made at an early day in the ensuing session of Congress, to reimburse the people of Arkansas and myself. I must therefore beg leave to request the department to estimate for funds for that purpose at the proper time, as well as for a sufficient sum to continue the work next year; an estimate for which is herewith furnished.

I have also to state to the department that the condition of that part of the Red river where the raft was formerly located, has been very much improved by the action of the current on its banks, and the operations of the boats during the last year. The channel is full one-third wider now than it was when the operations were closed on the 25th of May, 1838. Still, there is much yet to be done to place the river in a condition to carry down the immense quantity of drift that floats on its surface during the freshets that prevail in the spring and summer of each year. To secure that object, I would suggest that the bayous which have been forced open by the back water from the head of the Great raft, as it progressed up the river for centuries, (some of which have been stopped, but a great many yet remain open,) should be completely stopped, and levees thrown up along the banks where they are liable to overflow, and form new outlets for the water. That work will be necessary to confine the water to the original channel of the river, by which means alone its navigation can be rendered permanent. To effect that object, it will require all the bayous to be stopped up, and the low banks leveed from eight miles above the head of the raft down to the Willow chute, a distance of about thirty miles on the southwest bank of the river. In that distance there are eight bayous, three of them large and five small ones, and about twenty miles of low bank that will require an embankment of about three feet in height, four feet wide on top. On the northwest bank, from Benivaris bayou down to Latchego settlement, a distance of about 35 miles, there are 8 bayous and about 22 miles of low bank that will require an embankment of the same dimensions as above.

The advantages to be derived from that operation are various and important in their character:

1. The water that flows out through the bayous on the southwest bank, near the head of the raft, passes into a chain of lakes that have been formed by them, extending from opposite the head of the raft down about 20 miles in a straight line, and falls into the river through two outlets, from the lake near the bluff at Shrevesport, which backs up the river, from above those bayous for about 15 miles, diminishes the current so much that it has not sufficient power to open the original bed of the river for that distance, in which there are several shoals at low water that would be immediately removed by the action of the

current if the whole volume of water was forced down the channel of the river, in its original course.

2. The bayous that require stopping on the northeast bank, carry off their water into the lakes on that side of the river, and fall into the river again through Loggy bayou and the Bistenean chute at the foot of the raft, and back the water up in like manner with those above Shreveport, and slacken the current of the river a distance of at least 25 miles to such extent that the banks of the river have not given way any of consequence since the raft was removed from that part of the river in the spring of 1833, where its channel is now much narrower than at any other point in the whole extent of that part of the river in which the raft was formerly located, which is a distance of one hundred and sixty-five miles. I know of no other plan of operation than the one here proposed, to effect the improvement of those two sections of the river, say 15 miles above the upper bayou, coming in from Lake Soto on the southwest, and 25 miles above Loggy bayou coming in from the northeast side.

3. By the operation, a large extent of land as fertile as any in the Union, and the best quality of cotton land, will be redeemed, equal in value to any in the State of Louisinia. And instead of the operation being a charge to the government, it must result in a large profit in the value of the land that will be dried, which is now flooded one half the year.

4th. The health of the country must be vastly improved by drying so large a body of land. The effect of drying the land will be obvious to all. The channels of the bayous that will be stopped, will be natural drains for the water that falls from rains or springs from the earth. The fall from the river to the old bed of the lakes is so great that it now produces a very rapid current, and will be quite sufficient to drain all or nearly all the land in the valley. I would therefore recommend it, independent of the important and indispensable utility to be derived from the improvement of the river at the points above designated.

I would also recommend an appropriation for clearing the banks of the river where they are liable to cave in, of the timber, and cutting that timber so short that it will not be liable to lodge in the narrow parts of the river, where it may fall into the water by the caving in of the banks, and to remove the snags from the bed of the river as far up as Fort Towson. That description of work will, in a great measure, remove the first cause of the reformation of the raft, and at the same time very much improve the navigation of the river as far up as navigable by steamboats; many parts of which are now very dangerous from the great number of snags and roots in its channel.

The improvement of the country from the original foot of the raft to Fort Towson, a distance of about seven hundred and fifty miles by the meanders of the river, has been very great since the commencement of the work of removing the raft in 1833. At that time there was no settlement on the river from forty miles below the raft up to Fort Towson, with the exception of a small settlement near the Caddo agency, and a few settlers in Arkansas and Texas, above the raft. There are now many flourishing cotton plantations on that part

of the river where the raft was located, and where the lands were then nearly all inundated by the back water caused by the massses of timber which formed the raft. There has also a town sprung up equal in population and surpassing any on Red river in amount of business transactions. The country between the Red and Sabine rivers, has settled with a dense and respectable population. That part of the State of Arkansas bounding on Red river, has populated, and is now the best settled and most wealthy part of the State, and is all in a rapid march of improvement, requiring nothing but the permanent improvement of the navigation of Red river to render it one of the richest and most desirable sections of the United States. Cotton can be grown to advantage as high up as Fort Towson, which is situated in about thirty-four degrees of latitude. The river in its whole course from the Mississippi, one thousand one hundred miles, making but three degrees northing, ranging from thirty-one to thirty-four degrees north. No country in the Union can excel it for raising stock of all kinds—horses, mules, horned cattle, hogs, and sheep, all do well in the country; and above the thirty-third degree of latitude, it is not surpassed by any climate for the growth of wheat, rye, oats, and corn. The country off the river is well watered, abounding in springs of pure cool water, possessing every advantage to be met with in any part of the United States in the cultivation of the soil; and from the character and enterprise of the present population must, in a very short time, be in possession of all the comforts and conveniences of life that can be had in that delightful climate.

An estimate of funds required for the several improvements recommended, is herewith respectfully submitted, and I hope will meet the approbation of the department.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE, *Sup't.*

Col. Jos. G. Totten,
Chief Engineer, Washington City.

Bureau of Topographical Engineers,
December 6, 1856.

A true of the original on file in this office.

J. J. ABERT,
Colonel Corps of Topographical Engineers.

Engineer Department,
Washington, December 2, 1856.

Sir: In answer to the application from the Court of Claims for copies of certain papers in the case of Lydia R. Shreve, &c. *vs.* The United States, and referred to this office for report, I have the honor to transmit copies of so much of the reference as applies to this office. The papers are as follows:

1. Department letter to Colonel Sam'l McKee, at Lancaster, Kentucky; May 19, 1826.

2. Department letter to Captain H. M. Shreve, at Louisville, Kentucky; April 9, 1827.
3. Department letter to Mr. H. M. Shreve, Louisville, Kentucky; December 11, 1827.
4. Department letter to Captain H. M. Shreve, at Cincinnati, Ohio; January 24, 1828.
5. Department letter to Mr. H. M. Shreve, at Louisville, Kentucky; June 27, 1828.
6. Department letter to H. M. Shreve, at Louisville, Kentucky; July 1, 1828.
7. Department letter to Captain H. M. Shreve, Louisvile, Kentucky; August 8, 1828.

I am very respectfully, sir, your obedient servant,

JOS. G. TOTTEN,
Brevet Brigadier General, Chief Engineer.

Hon. JEFFERSON DAVIS,
Secretary of War.

B.—No. 1.

Chief Engineer to Colonel McKee.

ENGINEER DEPARTMENT,
Washington, May 19, 1826.

SIR: Under the authority of the act of Congress passed the 24th day of May, 1824, entitled "An act to improve the navigation of the Ohio and Mississippi rivers," and appropriating $75,000 for that purpose, the War Department, on the 12th day of October, 1824, entered into a contract with John Bruce, of Vanceburg, Lewis county, Ky., for improving the navigation of that part of the Mississippi river extending from the mouth of the Missouri to New Orleans, and of the whole extent of the Ohio river from Pittsburg to its junction with the Mississippi river, according to the provisions of the said act, which contract, it is stipulated, shall be completed on or before the 1st of January, 1827; the whole to be done under the inspection and to the satisfaction of an officer of the corps of engineers, or some other person to be appointed by the Department of War for that purpose; and further, that the sum stipulated to be paid shall be paid in proportion as the work advances, and on the inspection and certificate of the officer of the corps of engineers or the person designated for that purpose.

Major Samuel Babcock, of the corps of engineers, was first appointed to superintend the operations under the contract, to give the certificates of the quantity and value of the work done, and to see to the fulfilment of said contract; but from a variety of reports to the War Department, coming from sources entitled to consideration, that he had neglected his duty, and had permitted the contractor to proceed without clearing the Ohio river of all the snags, sawyers, and other obstructions which he had agreed to remove, Major Long, of the topo-

graphical engineers, was ordered to relieve him in the superintendency of the contract aforesaid; and as it has been found that the services of Major Long will be required elsewhere, and, moreover, as it has been represented to the Secretary of War that it would be highly satisfactory to the people most interested in seeing the intentions of the act of Congress carried into effect, that you should be appointed to the superintendency of the improvement of the navigation of the Ohio and Mississippi rivers, the Secretary of War, in compliance with the wishes and recommendations of many members of Congress from the western States, has thought proper to appoint you superintendent as aforesaid, and by his direction you are hereby appointed accordingly. Should you accept of this appointment, you will notify me on the acceptance hereof, or as soon thereafter as practicable. Your compensation, which is fixed at the rate of six dollars a day, will commence from the date of your acceptance of this appointment.

It has been represented to the War Department that there are obstructions in the Ohio and Mississippi rivers other than those enumerated in the contract, (which can scarcely be conceived,) but which might be conveniently removed by the contractor in the prosecution of the work designated in the contract, and you are authorized to agree with the said contractor for the removal of such obstructions, provided the sum stipulated to be paid therefor shall not exceed the residue of the appropriation which may remain unexpended after deducting the $60,000 to be paid under the existing contract, if completed; the amount of your own compensation; the expenses to be incurred in the hiring of hands and pilots who may attend you while inspecting the operations of the contractor, and such other incidental expenses as may unavoidably attend the execution of the duties herein assigned you. The amount remaining on hand applicable to these objects is between $7,000 and $8,000, of which a portion must be reserved to meet some expense connected with an experiment lately made by Major Long for the improvement or removal of sand bars in the Ohio, which experiment is chargeable to the same appropriation. You will, therefore, limit your calculations to $7,000, which will be remitted to you on your requisitions in such sums and at such places as you may designate as most convenient. Major Long has made some arrangements, and no doubt incurred some expense, in reference to the superintendence of Mr. Bruce's contract. These arrangements are presumed to be judicious, and such as you would yourself adopt; and you will, so far as he may be bound by engagements connected with this business, assume the same, and discharge them. Major Long will be directed to transfer to you whatever property may belong to the United States and the papers connected with said business.

For your information I enclose herewith a copy of the act of Congress of the 24th of May, 1824, before referred to; also a printed document of the Senate, dated January 5, 1826, No. 14, being a letter from the Secretary of War, accompanied by a report of the chief engineer, with documents relating to the application of the appropriation made by said act of Congress, and the manner in which the work under the contract of Mr. Bruce is reported to have been executed; document of the House of Representatives, No. 36, dated January 9,

1826, which is a memorial of sundry owners, masters, and pilots of steamboats navigating the Ohio and Mississippi rivers, relating to the same subject; and a report from the Select Committee on Roads and Canals, to whom the above mentioned letter, with the papers and the memorial alluded to, were referred, being document of the Senate, dated March 20, 1826, and numbered 62.

Among these documents will be found also a copy of the contract of Mr. Bruce, and of the form of the certificates to be given in reference to work done under the contract and the value of said work.

You will, in executing the duties assigned you, be governed by the contract and the instructions which you may receive from this department, and give the certificates in the prescribed form; and in keeping and in rendering your accounts of disbursements you will be guided by the enclosed regulations adopted for the government of the Engineer department.

You will observe in your arrangements involving expenditures the greatest economy compatible with a faithful and judicious attention to the public interest herein confided to you.

All communication which you may make to this department you will address to the Secretary of War, and endorse on them "Engineer service."

Very respectfully, sir, your obedient servant,

ALEX. MACOMB,
Major General, Chief Engineer.

Col. SAMUEL MCKEE,
Lancaster, Garrard County, Ky.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the above and foregoing letter is a true copy from the records of this office.

JOSEPH G. TOTTEN,
Bt. Brig. Gen. and Chief Engineer.

No. 2.

ENGINEER DEPARTMENT,
Washington, April 9, 1827.

SIR: Your letter addressed to the Secretary of War under date of the 20th of February last, reporting your opinion upon the question of Mr. Bruce's ability to fulfil, with the means in his possession, his contract for removing the obstructions to the navigation of the Ohio and Mississippi rivers, and giving also your views in regard to the mode most likely to effect the object of the law by which the contract was authorized, has been received and duly considered.

From the condition in which you represent the preparations of Mr. Bruce for carrying on his contract, and the unfavorable opinion you express as to his ability to execute the contract with the means possessed by him, and his ability in other respects to complete the con-

tract within a reasonable time, if at all, it has been determined by the Secretary of War to declare the contract forfeited, of which you will advise Mr. Bruce, if in your vicinity, and if not, his proper agent. The enclosed is a copy of a letter which has this day been written to Mr. Bruce and addressed to him at Louisville.

The Secretary of War approves of your plan for removing the obstructions in the Mississippi river, and has directed me to say to you that you will take measures to carry into effect, as soon as practicable, the project presented in your letter before mentioned. You will make an estimate of the sums that will be required for effecting each object, as near as you can make such estimate, stating in detail the items of expenditure, and forward the same to this department to be submitted to the Secretary of War, and at the same time state to what place you would desire the money to be sent and at what particular periods.

I am, sir, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Superintendent, Louisville, Ky.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the foregoing letter is a true copy from the records of this office.

JOSEPH G. TOTTEN,
Bt. Brig. Gen. and Chief Engineer.

No. 3.

ENGINEER DEPARTMENT,
Washington, December 11, 1827.

SIR: Your letter of the 24th ultimo, requesting permission to dispose of such articles of public property now in your possession as are of a perishable nature, and cannot be preserved for service until the next season, has been received, and agreeably to your recommendation you are now authorized to make the proposed sales, and you will credit the government with the proceeds thereof in your account current for the next quarter.

Your suggestion of the propriety of constructing steamboats for the removal of obstructions in the main channel of the river has been duly considered by the department, and although little doubt is entertained of the superior efficiency of that kind of vessels in removing the impediments to the navigation, yet as their construction will necessarily involve a very considerable expense, it is desirable that the department should be furnished with an estimate of the expense of building one or more boats, as might be deemed necessary by you, before authorizing the measure.

It is yet uncertain whether additional appropriations will be made by Congress at the present session to prosecute the improvements

which you superintend, but it is believed that they are considered of sufficiently national importance to warrant the expectation that liberal provision will be made to complete a work which promises to be of such great public utility; and it is necessary, therefore, that the department should be furnished with an estimate of the sum necessary for carrying on your operations in the most vigorous manner during the ensuing year. This estimate should set forth in detail the amounts requisite for each particular purpose, such as labor, machinery, boats, stores, &c.; and it is highly desirable that it should be forwarded to the department with as little delay as possible.

In making your estimates of the expense of constructing steamboats or other vessels, the greatest regard should be paid to economy; strength and efficiency are the great objects to be obtained, and these only are necessary. The same attention to an economical expenditure of the public funds for all other objects is equally desirable. A requisition was made yesterday for $3,000, to be placed to your credit in the United States Bank at Louisville, Ky.

I have the honor, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Mr. HENRY M. SHREVE,
Sup't Miss. and Ohio rivers, Louisville, Ky.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the above and foregoing letter is a true copy from the records of this office.

JOSEPH G. TOTTEN,
Bt. Brig. Gen. and Chief Engineer.

No. 4.

ENGINEER DEPARTMENT,
Washington, January 24, 1828.

SIR: Your letters dated the 1st and 7th instant, the first accompanied by your accounts for disbursements to that date on account of your superintendency, and the latter enclosing estimates for building a steamboat for improving the bed of the Mississippi river and for cutting timber off the banks of the river, have been received. Your estimates have been communicated to Congress, with other documents relating to the improvement of the Ohio and Mississippi rivers; but no measures can be taken by this department before a decision shall be made on the subject by Congress, who have it now under consideration.

I am, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Superintendent, &c., Cincinnati, Ohio.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the above letter is a true copy from the records of this office.

JOSEPH G. TOTTEN,
Bt. Brig. Gen. and Chief Engineer.

No. 5.

ENGINEER DEPARTMENT,
Washington, June 27, 1828.

SIR: Your letter of the 9th inst. has been submitted to the Secretary of War, together with the previous ones on the subject of building a steamboat to be used in improving the navigation of the Mississippi river. The Secretary approves of the *use* of the steamboat for that purpose; but, to avoid the heavy expense of constructing one, which would probably be of little value after having performed the contemplated service, it will be preferable to hire a boat, if a suitable one can be obtained in that manner, or else to purchase one, which could probably be effected, not only with less delay, but at less cost than the construction would require. To avoid unnecessary delay, however, in case it should be absolutely necessary to build, a requisition has been made for $10,000, to be deposited to your credit in the Bank of the United States, at Louisville, which sum, if not required for obtaining a steamboat, will be applied by you, at the proper season, to the prosecution of the work under your charge. I embrace this opportunity to remind you of the necessity of making a report of your operations in time to be laid before Congress at its next session, which report, it is hoped, will exhibit considerable progress during this season.

I am, &c., &c.,
A. MORDECAI,
Lieut. Engineers, Assistant Chief Engineer

Mr. H. M. SHREVE,
Superintendent, Louisville, Ky.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the above letter is a true copy from the records of this office.

JOSEPH G. TOTTEN,
Brevet Brigadier General and Col. Engineers.

N

ENGINEER DEPARTMENT,
Washington, July 1, 1828.

SIR: Agreeably to the recommendation contained in your letter of the 28th December last, the Secretary of War has directed me to au-

thorize the sale of the small steamboat heretofore used by you in the improvement of the Mississippi river. You will therefore dispose of the same, by public sale or otherwise, in the most advantageous manner, and charge yourself with the proceeds, to be applied to the improvement of the river. If it should not be sold at public sale, (which is, however, recommended,) it will be proper to have a valuation made by three masters of steamboats, and forward the same with your accounts, as a voucher for the receipt which you will give to the purchaser. Mr. Jas. G. Palls, of Louisville, has addressed a letter to this department, requesting to become the purchaser, and has been referred to you for that purpose.

Since the date of the letter of this department, authorizing the purchase or construction of a steamboat to be used in removing the obstructions to the navigation of the Mississippi river, a representation on the subject has been made, through Captain Chase, of the corps of engineers, by Mr. Paul Anderson, a copy of which is herewith transmitted. It is not the intention of the department to cast any censure on your proceedings by so doing; but solely to suggest a consideration of the idea set forth in that communication. I would again mention the propriety of avoiding the expense of building or purchasing a steamboat if the business can be managed by hiring one.

By order of chief engineer,

A. MORDECAI,
Lieutenant Engineers, Assistant Chief Engineer.

H. M. SHREVE,
Superintendent, Louisville, Ky.

ENGINEER DEPARTMENT, *December* 2, 1856.

I certify that the foregoing letter is a true copy, from the records of this office.

JOSEPH G. TOTTEN,
Brevet Brigadier Gen. Colonel Engineers.

No. 7.

ENGINEER DEPARTMENT,
Washington, August 8, 1828.

SIR: Your letter dated the 28th ultimo, enclosing three contracts for building steamboat, making the engine, and for making boilers, with certificates as to the necessity of building a steamboat expressly for the purpose, of your superintending, and of the manner in which you have operated on the Mississippi river, has been received.

Your request to have deposits made to your credit in the branch banks at Cincinnati, Ohio, and Louisville, Ky., at stated periods, shall be attended to. Requisitions have been made this day for $1,000, to be deposited to your credit in the branch of the United States Bank,

in Cincinnati, and for $5,500, to be deposited in the branch bank at Louisville, Kentucky.

I am, sir, &c.,
A. MORDECAI,
Lieut. Engineers, Assistant Chief Engineer.

Captain H. M. SHREVE,
Superintendent, Louisville, Ky.

ENGINEER DEPARTMENT,
Washington, December 2, 1856.

I certify that the above letter is a true copy, from the records of this office.

JOSEPH G. TOTTEN,
Brevet Brigadier General Corps Engineers.

WAR DEPARTMENT,
Washington, December 14, 1857.

SIR: I transmit, herewith, certain copies of papers to be used in the case of Lydia R. Shreve *vs.* the United States, called for by an order of the Court of Claims, enclosed in yours of the 3d instant, so far as they can be furnished from the files of this department, viz:

1. Letter from George L. Welcker, lieutenant and assistant to chief engineer, to Henry M. Shreve, esq., at St. Louis, Missouri, dated September 11, 1841.
2. Letter from Richard Delafield, lieutenant corps of engineers, to Major General Alexander Macomb, chief engineer, dated Baltimore, July 14, 1824.
3. Letter from Richard Delafield, major of engineers, to Colonel J. G. Totten, chief engineer, dated West Point, February 11, 1839.
4. Letter from H. M. Shreve, to Engineer department, dated July 7, 1824.
5. Letter from Captain G. Birch to Major General Gaines, dated May 12, 1826.
6. Letter from H. M. Shreve, to Engineer department, dated October 1, 1827.
7. Letter from H. M. Shreve to Engineer department, dated October 22, 1827.
8. Letter from H. M. Shreve to Engineer department, dated November 24, 1827.
9. Letter from H. M. Shreve to Engineer department, dated January 7, 1828.
10. Letter from H. M. Shreve to Engineer department, dated June 9, 1828.
11 Letter from H. M. Shreve to Engineer department, dated July 13, 1828.
12. Letter from H. M. Shreve to Engineer department, dated July 82, 1828.

13. Letter from Captain A. H. Bowman to Captain W. H. Chase, dated June 18, 1829.
14. Letter from H. M. Shreve to Engineer department, dated July 22, 1829.
15. Letter from Lieut. Colonel L. H. Long to Colonel J. J. Abert, dated April 24, 1848.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

S. H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims, Washington city.

ENGINEER DEPARTMENT,
Washington, December 11, 1857.

SIR: In answer to the application of the Court of Claims of the 3d instant, for copies of certain papers in the case of Lydia R. Shreve *vs.* the United States, and referred to this office for report, I have the honor to transmit herewith copies of so much of the reference as applies to this office.

The papers are as follows:

1. Letter from Geo. L. Welcker, lieutenant and assistant to chief engineer to Henry M. Shreve, esq., at St. Louis, Missouri, dated September 11, 1841.
2. Letter from Richard Delafield, lieutenant corps of engineers, to Major General Alex. Macomb, chief engineer, dated Baltimore, July 14, 1824.
3. Letter from Richard Delafield, major of engineers, to Colonel J. G. Totten, chief engineer, dated West Point, February 11, 1839.

Very respectfully, your most obedient,

H. G. WRIGHT,
Captain of Engineers in charge.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 1.

ENGINEER DEPARTMENT,
Washington, September 11, 1841.

SIR: The Secretary of War has directed that John W. Russell be appointed agent, under this department, for taking charge of the boats and other public property, now under your charge near St. Louis, and belonging to the improvement of the Arkansas river, and of the Ohio and Mississippi rivers below the falls of the Ohio.

As this change is to be made, it is desirable that the transfer should take place on the 30th instant, being the end of the present quarter, and of the fiscal year. By this arrangement you will be enabled to

make out the usual quarterly and annual reports and papers, and forward the same to this office.

Mr. Russell has been notified of his appointment, and has been directed to take charge of the public property at the time above specified. You will, therefore, turn over to him all the public property under your charge, belonging to the improvement of the western rivers, and all the funds remaining in your hands and belonging to the said improvement, taking duplicate receipts therefor; one copy of which you will forward to this office, with your other papers, that your accounts may be brought to a final settlement, and closed, as well in this office, as in the office of the Third Auditor of the Treasury.

In concluding this communication, which finally dissolves your connexion with the government as agent of this department, I take the occasion to say, that the zeal you have manifested for the public interests, the ability you have displayed in conducting your operations, and the faithful manner in which, for a series of years, you have executed the various and important trusts committed to your charge, entitle your conduct, (so far as is known to this department,) not only to an avowal of satisfaction; but also to an expression of high approbation.

By order.

GEO. L. WELCKER,
Lieutenant and Assistant Chief Engineer.

HENRY M. SHREVE, Esq.,
St. Louis, Missouri.

ENGINEER DEPARTMENT,
Washington, December 11, 1857.

I certify that the above and foregoing letter is a true copy from the records of this office.

H. G. WRIGHT,
Captain of Engineers in charge.

No. 2.

BALTIMORE, *July* 14, 1824.

SIR: I notice in the public prints, an advertisement of your depart-part, dated the 1st of June, offering an inducement to persons for the plan, machine, or instrument, best calculated to remove the sawyers, planters, and snags in the Mississippi river, so as to render the navigation safe and free. Being a subject of great importance to the commerce of that river, it engaged my attention while there during the past winter, and as a point of duty, would suggest the propriety of using a *steamboat* of sufficient power (to be readily procured at New Orleans,) for this purpose, by attaching a hawser (hemp or chain) to the snag or planter, and made fast to the boat, and by applying the power either in the direction of the log or circularly. I conceive the most firmly placed tree, may be either removed from its position to the deep water, or broken off to such a depth as entirely to do away

its pernicious effects. I believe this plan susceptible of being the most easily carried into effect, and at the minimum expense, when compared with the various machines contrived for sawing under water.

Respectfully, your obedient servant,

RICH'D DELAFIELD,
Lieutenant Corps of Engineers.

Maj. Gen. ALEX. MACOMB, *Chief Engineer.*

ENGINEER DEPARTMENT, *December* 11, 1857.

I certify that the above is a true copy from the original now on the files of this department.

H. G. WRIGHT,
Captain of Engineers in charge.

No. 3.

WEST POINT, *February* 11, 1839.

SIR: I must be excused from communicating fully by to-day's mail on the subject of your letter of the 7th instant, indisposition still preventing my giving the necessary attention. Without reference to any of my notes or reports, my impression is, that the machinery used on board Shreve's snag-boat, is the wheel and axle, as used and applied in thousands of instances, and the application thereof to raising snags from the western waters was made by some one under Major Babcock, and that Captain Shreve received the boats and this machinery from his predecessor. The power was applied by manual labor, by an endless rope on the wheel, to an axle moved by cap-wheel gearing, the whole placed on scows; this arrangement *continues* to be used in the shoal water and low water season, as the cheapest, and in many instances most efficient. The change made by Captain S., was to put this same description of machinery on board of a steamboat, and using the power of the engine to give motion to the rope on the wheel. This is most convenient for the deep waters, and in strong currents, where the others cannot be moved across the rivers with facility.

It is now judged, however, in many instances to be more expeditious, and convenient to use a derrick, (instead of the wheel and axle,) placed on the bow of a steamer of ordinary construction, with the tackle purchase, carrying the fall to the main shaft of the boat's engine. This is the method I saw on board one of the government boats under Captain McKnight, on the Cumberland, the past summer, and is quite as worthy of application elsewhere as the wheel and axle.

There is one peculiarity in Shreve's snag-boat, which is the snag-beam, intended to underrun a snag, and break it; this I believe is strictly Captain S.'s idea, yet I cannot think its application entitled to remuneration, as it is, or as long as I know anything of the operation, but seldom used with success.

You will perceive that I do not consider Captain S. as the inventor of the machinery used, but that he received it from his predecessor; and that a different, yet common and well-known purchase or machine,

the derrick, is found in many instances better suited, and in other positions that the wheel and axle on scows continues to be used, as better suited most of the year than the steamer.

I cannot think that an officer of the government is entitled to any patent right, or remuneration above that for which his talents and services are renumerated, for applying any or all of the well-known mechanical contrivances to accomplish the objects for which such individual qualifications were secured.

Respectfully, your obedient servant,

RICH'D DELAFIELD, *Major of Engineers.*

Col. JOSEPH G. TOTTEN,
Chief Engineer.

ENGINEER DEPARTMENT,
Washington, December 11, 1857.

I certify that the above and foregoing is a true copy from the original now on the files of this department.

H. G. WRIGHT,
Captain of Engineers in charge.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, December 11, 1857.

SIR: I have the honor to acknowledge your direction to report upon an application from the Court of Claims, for certain papers to be used in the case of Lydia R. Shreve *vs.* the United States, and to transmit herewith copies of the papers asked for, so far as they can be furnished from the files of this office, as follows:

4. H. M. Shreve to Engineer department, dated July 7, 1824.
5. Captain G. Birch to Major General Gaines, dated May 12, 1826.
6. H. M. Shreve to Engineer department, dated October 1, 1827.
7. H. M. Shreve to Engineer department, dated October 22, 1827.
8. H. M. Shreve to Engineer department, dated November 24, 1827.
9. H. M. Shreve to Engineer department, dated January 7, 1828.
10. H. M. Shreve to Engineer department, dated June 9, 1828.
11. H. M. Shreve to Engineer department, dated July 13, 1828.
12. H. M. Shreve to Engineer department, dated July 28, 1828.
13. Captain A. H. Bowman to Captain W. H. Chase, dated June 18, 1829.
14. H. M. Shreve to Engineer department, dated July 22, 1829.
15. Lieutenant Colonel S. H. Long to Colonel J. J. Abert, dated April 24, 1848.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Col. Corps Topographical Engineers.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 4.

LOUISVILLE, *July* 7, 1824.

SIR: Having received a circular from your department on the subject of the improvement of the navigation of the Mississippi by removing all trees which may be fixed in the bed of the river, I hasten to answer your inquiries with pleasure, it being a subject which has occupied my thoughts for some time, having been engaged in nvaigating that river for the last seventeen years in barge and steamboats.

I am of opinion that the river may be entirely freed of the above obstructions, and will therefore offer you the following suggestions concerning it.

To drag all the trees from their bed would not be practicable. In my opinion, a small portion of them might be removed in that way, but the most dangerous are so firmly planted in the sand and mud as to render it impossible to remove them without breaking them. I therefore think this plan would not be advisable.

The most proper plan I conceive to effect the object, would be to saw them off six or eight feet below the surface of the water at its lowest stage; the tops would then drift and not lodge again in situations to make them dangerous.

A boat drawing more than six feet water cannot pass the bars in the river at its lowest stage, therefore could not strike the stumps six feet under the water. I am also of the opinion that this would be the cheapest and best mode that could be adopted to clear the river of these impediments.

About three years ago I invented a machine for the purpose of sawing off snags, &c., under water, a model of which I will submit to the inspection of your department if desired; and, if adopted and used under the direction of a man adequate to the task, I have no doubt would succeed. The expense of the machine would not exceed eight thousand dollars. To pass rafts of timber down the river would be of no consequence, and the expense very great; besides they could not be managed to pass over the snags that are the most dangerous—such as stand on the bars, and under the points of land where the rafts could not go; and if floated over them many of them bend and rise again after the rafts had passed. The only proper season to engage in removing snags effectually would be from about the 15th of August to the 15th of November, when the water is at its lowest stage.

To make any estimate as to the exact amount of the expense attending the removal of the snags, &c., is impossible. I should suppose that it might be done for $50,000 from New Orleans to the mouth of the Ohio river. From observations I should be of the opinion that there are at least thirty thousand snags in the bed of the river for that distance. This would be about twenty snags to the mile. One-third of the number stand on bars that are dry when the river is low, and might be cut off close to the sand by axe-men, and the remainder sawed off by a machine situated on a boat of a certain construction for that purpose, to be *propelled by a steam engine*—the same engine driving the saw fixed so as to cut them off six feet under

water, if in water of that depth, or deeper; if in shallow water, the saw will take them off within one inch of the sand. If your department thinks my machine of any consequence, I will have a model made and exhibited for their inspection.

I have seen an advertisement stating that your department would receive proposals until the 1st September for the work to be let out in sections of fifty miles. This plan I think will not answer, as no man can make the necessary preparations for any sum that the government would be justifiable in giving for that extent of the river. The best mode, in my opinion, would be to let it out to one man, or company, who would undertake the whole, build the boats, prepare the necessary machinery, &c., for the purpose.

You will no doubt have a great variety of plans and opinions laid before you on this subject, and a great many applications for the contract, and but few capable of carrying into effect the intention of Congress. I shall not pretend to apply directly for the contract myself, unless the arrangement is changed so as to let the whole of the work to one concern. In that case I could form a company of the most competent men in the country to undertake it at a fair price.

I will, however, furnish you with a model of the machine which I have invented, if you deem it proper to inform me of your wish to examine it.

Very respectfully, your obedient servant,

HENRY M. SHREVE,
Master of steamboat Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 7, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 5.

CATONMENT JESUP, *May* 12, 1826.

SIR: Pursuant to an order of Major General Scott, dated Louisville, 25th October, 1825, I left Natchitoches with Lieutenant Lee and twenty-five men in a keel-boat provided with means of survey and exploration, and ascended Red river to the foot of the raft, at which place I left the keel, accompanied by Lieutenant Lee and six men in the skiffs, and pursued the course of old Red river through its meanderings a distance of ninety-six miles, passing in my route one hundred and sixty rafts of timber from one hundred yards to one mile in length, composed of logs of all sizes and so closely connected as to preclude the possibility of removal. The labor and difficulty encountered by us on the route was immense, having to drag our skiffs around all the obstructions, most of them a quarter and some a mile long, through thick wood and cane brake. Finding it im-

practicable to pursue Old River to the head of the raft on account of an increase of obstructions, (one of which is twenty-five miles in length,) by the advice and direction of Mr. Wallace (my guide) we left Old river and ascended Cass bayou into Cass lake, and passed through it, arriving at Schedo bayou, which runs out of Schedo lake, and through it we passed into the last named lake, and navigated it a distance of thirty or forty miles in a northern and eastern direction in search of the Coschatta bayou, which leaves the main river at the Coschatta village, thirty miles above the head of the raft. It is said to be only ten miles long, and rafted at the head where it runs out of the river. It had been passed through by one of my men, and Mr. Wallace, who has lived fifty years in the neighborhood, and is an intelligent and expert hunter, enabled me to locate the position of this all-important bayou, as will be perceived on reference to my map, which is herewith enclosed.

In our endeavors to find this bayou (which forms the most important link in the chain of the proposed communication by way of Bayou Pierre river and Red river, thirty miles above the head of the raft) we spent three or four days along the shore where its entrance was said to be located; but, owing to the shoalness of the lake, our skiffs were rendered useless, and the mud so soft that in attempting to coast the lake around on foot, we frequently, in the distance of half a mile, sunk up to our waists in the mud. Being nearly out of provisions, and no appearance of a rise of water, I concluded to return, not without, however, being perfectly satisfied as to the practicability of passing through the Coschatta bayou at a high stage of water. The communication between Schedo lake to Bayou Pierre river is noted on my map; through it we again passed our skiffs, and arrived at position No. 11, which is designated Lake Cut-off, and is located on the point opposite a bend in the river, which is rafted about one mile. The removal of which, or the cutting of a canal from the river above to Lake Cut-off, and hence to the river below, would make the navigation through Bayou Pierre river into Schedo lake open for keels; descending we next entered Bayou Pierre river, which runs out of Old river to the right, and is impeded by a small raft and several islands; below this, some distance, we meet with an obstruction consisting of stumps and logs; soon after we arrived at a part of the river which will require the removal of some trees which project from its banks. Conisnea Lake is the next obstruction; it is, however, open, but may be much shortened by cutting away some cypress trees. At the next point designated in the plan of the map the river becomes narrow, and the trees must be cut from its banks. Passing thence through Bayou Pierre lake we met with no obstacle of importance, and arrived at its mouth near Fort Selden, six miles by land from Natchitoches. Our keel-boat had been ordered to drop down the river to this place, and we proceeded in her to Natchitoches, and hence by land to this port.

With the aforegoing view of the survey, and by reference to my map, it may be safely calculated that the communication by way of Bayou Pierre river can be opened for steamboats, and that the raft of Old river can never be removed.

The labor and expense necessary to render a communication through the raft by way of Bayou Pierre river and the Lakes Cass and Schedo I will not attempt to estimate for, but leave it to those better qualified on the subject. I will remark, however, that I do not think the work so difficult as has generally been believed.

The route at present navigated by keels through the raft leaves the main river, ascending at the foot of the raft forty miles by land above Natchitoches, and passes through a bayou and small lake to Lake Bistenan—thence through a bayou six miles to Swan lake—thence to Lake Bodkeau, through a bayou ten miles long. From Lake Bodkeau boats enter Bee bayou, which has a circular course, and is fifty miles in length. At the head of it is Muddy lake, a short distance from Red river above the raft. In 1822 Captain Berryman of the 7th infantry cut a canal from the river to the bayou, only one hundred and twenty-seven feet in length, through which he passed with his keel-boat, and which until last year has been the only communication from the river above to the keel-boat navigation below. A Mr. Harrison passed up with a keel-boat last winter, and found that the river had rafted up to the outlet cut by Captain Berryman, and had also choked up the canal. Mr. Harrison was then obliged to cut an outlet higher up the river, through which this spring numbers of boats have passed down with facility. The great objection to this route is, that, owing to the filling up of the river with drift-wood every year at least two miles ascending, in a short time the raft forms above and chokes up the canal previously cut, and renders the cutting of another necessary higher up the river and above the drift-wood. In conclusion, allow me to report the active exertions of Lieutenant F. Lee towards the accompiishment of the object of the expedition, and to remark that in conformity to the general order (enclosed) extra compensation is expected by the detachment.

Very respectfully, your obedient servant,

G. BIRCH,
Captain 7th Infantry Commanding.

Major General GAINES,
Commanding Western Department.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT.
Colonel Corps Topographical Engineers.

No. 6.

ISLAND No. 5, THIRTY MILES BELOW THE OHIO RIVER,
October 1, 1827.

SIR: Your letter dated 20th of August last, informing me of a requisition in my favor for $3,500 has been received; that sum has been deposited and received by me. My progress in the improvement of

the navigation of the Mississippi river has not been as great as I anticipated, in consequence of the very unusual high stage of the water in August and September. I was not able to commence operations until the 24th of last month. The river is at this time ten feet above extreme low water. I have removed all obstructions from off the sand bars and island chutes this far down from the mouth of the Ohio river, that are dry at this time. The water is now falling faster than it has done during the month of September, except a few days about the first of that month, after which time there was a rise of two feet. So soon as the water is sufficiently low, I intend commencing again at the mouth of the Ohio river with fifty men to remove such obstructions as are at this time under water on the sand-bars, &c., and those situated in shoal water on the points where the steamboats run when ascending the river. The machine boats prepared for that part of the work I find from experiments made will answer quite as well as I had expected, except the chains which were first furnished for fastening unto the logs, those I found to be too light; I was obliged to return to Louisville with the small steamboat, and procure others of a larger size. On making some experiments with the machine boats in the main channel of the river, I am induced to believe that they cannot be managed to advantage in that part of the river where the current is very rapid and the trees very heavy, which, when drawn out of the mud in the bottom, leaves from twenty to thirty feet of the tree below water, consequently the current takes so great a hold of the trunk and roots that the boats are unmanageable until the tree is hauled to the surface of the water and the roots cut off, which will necessarily occupy so great a length of time that the boats will in most cases drift from five to ten miles down the stream, and be liable to great danger from other obstructions in the river below, and will require twelve men to work the boats up to their former position at the rate of about one and a half miles an hour; besides there are a great number of trees so firmly planted in the mud that they will require more weight than those boats will have to remove them; therefore I am convinced that no boat can be constructed to be worked by men that will ever remove the description of obstructions last alluded to. I would therefore beg leave to recommend steamboats to be built, (provided Congress should make another appropriation for the improvement of the navigation of this river,) to be so constructed as to apply the power of the engine to raising and cutting out the obstructions, and for propelling the boats. This I believe to be the only mode of effecting the object, agreeably to the views of the government. In the event of this plan being adopted, I would beg leave to submit a plan for such boats to your department. Having no particular instructions at what point on the river I should commence operations this season, I determined to begin at the mouth of the Ohio river, there being a much larger proportion of the commerce of the country carried on upon that part of the river that lies below the Ohio, than on that extending from the mouth of the Missouri river to the mouth of the Ohio. I hope that determination will meet the approbation of the government, and best satisfy a large proportion of the people interested in the improvement of the navigation of the river.

In the present month, I expect to proceed with the work about two hundred miles, by the 10th of November; you will receive my report of work done specifying the number and character of the obstructions removed, which under the exciting circumstances I hope will be satisfactory to the department.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

Major General ALEXANDER MACOMB,
Chief Engineer, Washington.

BUREAU TOPOGRAPICAL ENGINEERS,
December 10, 1857.

I certify that the within and foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 7.

ISLAND No. 33, MISSISSIPPI RIVER,
October 22, 1827.

SIR: I have progressed with the improvement of the navigation of the Mississippi from the mouth of the Ohio river as far down as island No. 33, commonly called Flower island, distant from the former point one hundred and eighty miles. I have removed from off the sandbars and island chutes all the obstructions to the navigation of the same, consisting of logs, roots, trees, wrecks of boats, &c. I had contemplated in the commencement of the operations to keep a correct account of the number of logs, trees, &c., removed; but finding this to take up more of the time and attention of the assistant superintendents than I supposed that object would justify, I have abandoned that part of my plan. The obstructions that have been removed, I found much more numerous than I had expected, and many of them required more labor than I had anticipated; the fallen timber on the shores, all of which retain their roots, which require to be cut off, the tops of the trees trimmed so as to prevent them from fixing themselves in the bed of the river so as to become formidable obstructions hereafter, requiring great labor. I have also caused to be cut down many hundred trees which stood immediately on the falling banks at the lower extremity of the bends, and such as will fall with the next rise of water. The last mentioned work may be thought by persons not well acquainted with the character of the river, to be superfluous; however, I am confident that it is of as much importance as any other work that has been done, or can be done, as well to prevent those trees from falling into the river and becoming formidable planters, as to prevent their falling on boats when ascending the river—a circumstance which has frequently happened, doing much damage to the boats, and in two cases the loss of several lives. From

off the sand bars every description of obstructions have either been removed, or cut to pieces in such a manner as to leave them loose from the sand, that they will drift off with the first rise of water. On the points of the islands where there are immense rafts of drift wood, I have burned and cut them off in such a manner as to destroy them. The last mentioned obstructions are very formidable to flat-boats descending the river in spring floods; the chutes part the of islands have been cleared of all snags, roots, &c., as well as the timber on their banks which lean over the water, and are dangerous to the upper works of steam boats when passing through them.

I shall return this day with part of my force to the mouth of the Ohio river, for the purpose of commencing operations with the machine boats at that place, where I left them on account of the water being too high to use them to advantage when I commenced work upon the shores, bars, chutes, &c., since which time the water has fallen but three feet; it is, at this time, about seven feet above extreme low water; it is now falling, and from the present appearance of the weather, I am of opinion that the latter part of the season will be more favorable for the operations on the river. I leave Captains John Sowers and Samuel Pennington, with sixty-five men, to proceed on from this place, clearing the shores, bars, chutes, &c. I return with thirty men to commence taking up such snags as stand in shoal water around the sand bars. I have been compelled to discharge twenty-five men on account of sickness, having lost two by death. When I arrive at the mouth of the Ohio, I intend engaging twenty or thirty men to fill up the two parties which will commence work again at that place.

I am not able to determine how long I shall be enabled to continue the work; however, from the length of time that the river has kept up this fall, I am induced to believe that the work may be continued during the month of December, and perhaps part or all that of January; in that event I shall require three thousand dollars each month over and above the first estimate of twenty thousand, which you will cause to be deposited to my credit in the United States bank at Louisville, three thousand on the first of December, and three thousand on the first of January, unless otherwise advised, which I will not fail to do in the event of being obliged to stop work at an early period of time.

Relating to the obstructions in the main channels of this river as far as I have proceeded, I have made a particular and careful examination of them. I find them very numerous and dangerous to every description of craft, particularly when descending the river. In my letter to the department, dated the 1st instant, I mentioned the use of steamboats for removing the obstructions to the navigation of the river, from main channel in particular. Since that time I have thought much on that subject, and have become altogether convinced that no other means will ever effect that object. I am also of the opinion that a boat may be so constructed as to effectually remove every description of obstructions from every part of the bed of the river for a much less sum of money than it can be done in any other manner, consequently the object may be effected in less time. I will take the liberty to suggest another object relating to the improvement of the navigation of

the Mississippi river, which appears to me to be of the greatest importance to that improvement, agreeably to the views of the government, which is to cut all the timber down standing on the banks of the river, one hundred yards back from the shore at all places where the banks are liable to cave in, which on the average is about half the distance on each bank of the river. That being done, and the obstructions removed from the bed of the river, they could not accumulate so as to endanger the navigation for many years; it would also be the means of preserving the banks of the river, a circumstance evident from experiments plainly to be seen at every improvement on the river where the timber has been cut from off its banks. They are more firm, and fall off less than the banks immediately above and below all such points on the banks. As relates to the value of the timber, it is of little or no value, being principally cotton wood and sycamore—a work which would cost the government probably two hundred dollars a mile, and would be of great importance to the navigation of the river when done.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Major General ALEX. MACOMB,
Chief Engineer, Washington, D. C.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps of Topographical Engineers.

No. 8.

TRINITY, ILLINOIS, *November* 24, 1827.

SIR: I have this moment arrived at this place from New Madrid, where I left the machine boats at work. I have succeeded in removing all the obstructions from off the bars, island chutes, &c., as far as the mouth of the St. Francis river, three hundred miles below the mouth of the Ohio river, and those from off the points, &c., with the machine boats as low as New Madrid, 75 miles below the mouth of the Ohio river. I have succeeded something better with the machine boats than I expected when I first commenced operations with them. I am of the opinion that they are as well calculated for the works, as they can be for boats to be worked by manual labor. Boats with steam power with a similar machine would be capable of executing the work at perhaps one half the expense that it can be done by men. A steamboat can operate at any stage of water when the snags can be seen, which will be about eight months in the year, and would be capable of removing every description of obstructions from the bed of the river, many of which cannot be removed by any other means, those being of a very

dangerous description to boats of every description when descending the river, for example. The steamboat America on her passage down from St. Louis to New Orleans, with a cargo of two hundred tons of lead and furs on board, struck a snag on the 17th instant at Plum point, 170 miles below the mouth of the Ohio river, which stove in her bow in such a manner that she went down in five minutes. She lies in about ten feet water; she was a firstrate boat, built last year; owned at St. Louis, Missouri. This is the fourteenth steamboat that has been lost by striking snags in the Mississippi river within the last five years, (twelve of them bound up the river,) the value of which with their cargoes amounts to about $560,000; other losses by steamboats within the same period of time, from being injured by snags, &c., has been about $125,000; in cargo damaged, and repairs of damage done to the boats, and in flat-bottomed boats, the losses within the same time has not been less than $360,000, making together the sum of $1,045,000 in five years lost by snags, &c.

There has been a rise of water within the last ten days of about three feet, which is now faling. From the appearance of the season at present, I am induced to believe that I shall be able to progress with the work two months longer; in that event, I shall require $6,000 over and above the first estimate of $20,000, as mentioned in several of my letters to you, which I hope you will forward to the United States bank at Louisville, as requested in my letter to you dated 30th of August last. I requested you to give me some intructions relating to disposal of part of the property in my hands belonging to the United States, which will not be of service to the business another year, being of such a nature that it is perishable, or so much so as to cost more to repair in the ensuing season than will justify keeping them over the season. Those instructions I have not yet received.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

Major General ALEXANDER MACOMB,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the within and foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 9.

CINCINNATI, OHIO, *January* 7, 1828.

SIR: In compliance with your request I herewith forward to you an estimate for building one steamboat for removing obstructions to the navigation from the main channel of the Mississippi river, accompanied by an estimate for working said boat eight months together

with 120 men for working on the sand-bars, island chutes, and for working the four machine boats used last year four months; also an estimate of the expense for working 300 men 9 months, at cutting the timber from off the banks of the river. I make the estimate separate for the purpose of showing my views on the subject as plain as I can do. The estimate for building the steamboat has been calculated for building at this place, which will be near the actual cost if built here of the best and most durable materials, say locust frame; but if I am compelled to build here below the falls of the Ohio river, the expense will exceed the above mentioned estimate probably two thousand dollars, in consequence of labor and timber being higher below the falls than they are at this place, provided I am furnished with authority to build such boat by the 10th of next month. I can have her ready to pass the falls before the water is too low in the summer, which is generally as late as the first of July, but in dry seasons as early as the first of June. In the event of my being authorized to build said boat, I shall have sufficient funds to commence her, and will be then able to inform you, where and at what periods I shall require the necessary funds. You may rely on every exertion in my power to economize in the expenditure of the public funds.

In replying to this you will please direct to me at Cincinnati, Ohio.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent.

Major General ALEXANDER MACOMB,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 10.

LOUISVILLE, KENTUCKY, *June* 9, 1828.

SIR: I have the gratification of informing you that the masters and pilots of steamboats navigating the Mississippi river unanimously agree in the opinion that the work done under my superintendence last year has been of much service in improving the navigation of that river.

The season of the year when the work for improving the navigation of the Mississippi river must be done being close at hand, my time for making the nececessary preparations now limited, I am induced to request you to inform me as early as practicable, what will be the determination of the department in relation to the subject. Should that decision be to authorize the building of a steamboat for the service agreeably to my estimate under date of the 7th of January

last, it would forward the completion of such boat by your causing ten thousand dollars to be deposited to my credit in the Branch Bank of the United States, at Louisville, Kentucky, as early as possible; that sum, with the amount remaining in my hands from last year, will be sufficient to unable me to proceed with the building of the steamboat, and for flat-bottomed boats for quarters for laborers, &c., for purchasing provisions for subsisting workmen on the river, until I receive instructions from the department, which will enable me to inform you at what periods the funds will be required for the prosecution of the work.

I have the honor to be, sir, very respectfully, you obedient servant,

HENRY M. SHREVE,
Superintendent.

Major General ALEXANDER MACOMB,
Chief Engineer, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 11.

LOUISVILLE, *July* 13, 1828.

SIR: Your letter dated the 27th ult., has been received, informing me of the decision of the Secretary of War, in relation to the use of a steamboat for removing of obstructions to the navigation of the main channel of the Mississippi river.

To hire or purchase a steamboat to answer that purpose will be impracticable; a boat of such construction as will be serviceable in improving the navigation of the Mississippi river, must be of a different model and form from any boat or vessel used for navigating that river, consequently she must be built. My estimate for the building of such boat furnished the department under date of the 7th of January last, as stated in my letter of the same date, was calculated for building at Cincinnati, Ohio, and that if built below the Falls of the Ohio, she would cost $2,000 more than the amount of that estimate. The difference in expense in building at Cincinnati and New Albany, Indiana, arises from the difference in wages, and for the transportation of the engine from Cincinnati to New Albany; Cincinnati being the nearest point where the engine can be had. You may, however, rely on my strict attention to economy in the expenditure of public money. Nothing will be expended in building and equipping the boat that can possibly be avoided, for the benefit of the service for which she is intended. In a few days you will be furnished with copies of contracts for boat, engine, &c., all of which will be as fully explained as possible.

I am now making prepartions for proceeding with the improvement

of the navigation of the Mississippi on the sand-bars and island chutes, and shall be governed by the stage of water in the Mississippi as to the time of commencement, which will be probably the first of September next. In my estimate for that part of the work furnished the department the 7th of January last, eighty men was the number stated for the work on the sand-bars and islandchutes, and forty men for working the four machine boats. I would now beg leave to recommend that fifty men be added to that number, making in all one hundred and seventy men, for which you have my estimate herewith. If approved, you will please cause to be deposited to my credit in the Branch Bank of the United States, at Louisville, Kentucky, the following sums at the periods of time here stated, viz: $8,000 as soon as practicable; this sum will be required immediately for purchasing provisions, buying and fitting up flat-boats for laborers, for furnishing two boats with cooking-stoves, furniture, &c., for repairing machine boats and skiff, for safe keeping of machine boats and storage on tools, and for five dozen axes.

On the first of September, $3,000; on the first of October, $3,000; on the first of November, $3,000; and on the first of December, $3,825; the four last named sums you will perceive by reference to my estimate, will be required to pay wages, and I hope will be attended to in due time; a deficiency in funds at any time will operate much to the disadvantage of the work. The place of deposit being so great a distance from the river, where the work will be done and where the wages must be paid, it will always require punctuality in your remittances, to meet my checks at such times as I may have opportunities to draw. The balance of the funds required for the steamboat, I will inform you when and where remit to in my next letter.

I have this moment received your letter of the 1st instant, accompanied by a copy of a letter from a Mr. Paul Anderson; you will plainly perceive from the statement he makes, from what he has been told, that he is not only ignorant of the subject, but has had very incorrect information, and in speaking of the work done last year he makes false statements, which you will have a proof of by my next communication, accompanying which I will furnish you with the opinions of owners, captains, and pilots of steamboats, in relation to the work done under my superintendence, the efficiency of my machine boats, built last year, and also of building a steamboat for the express purpose of improving the navigation of that river; also of Mr. Anderson's capacity to judge of my projecting to get through with the appropriation and not accomplishing the object, &c.

This reply would have been made five days sooner, but from an accident which I met with on the night of the 7th instant. I was passenger on the steamboat Volocipede, dotcending the Ohio river a few miles above this place, when she ran foul of the steamboat Franklin, by which a great part of her cabin on the starboard side was carried away. I was in one of the berths on that side of the boat, and was very much bruised and cut in my face and head, but not dangerously.

I have the honor to be, sir, very respectfully, your ob't serv't,

HENRY M. SHREVE, *Sup't.*

CHIEF ENGINEER, *Washington.*

BUREAU TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 12.

LOUISVILLE, *July* 28, 1828.

SIR: Your letter dated the 1st instant, authorizing me to make sale of the small boat formerly used by me in the improvement of the navigation of the Mississippi river, has been received. It will be necessary for me to have a steamboat of some description, to enable me to attend to the improvement of the navigation of that river on the sand-bars and island chutes, which I am now preparing to proceed with; therefore, I have determined to use that small boat; she will answer the purpose of affording me the facility of passing from one party of men to another, who will be engaged at that work, until I have the steamboat built, which is intended to be used for the purpose of removing the obstructions from the main channel of the Mississippi river. A copy of the contracts for that boat, with the engine and boilers, are herewith transmitted to the department, accompanied with certificates signed by all the respectable and experienced steamboat masters now in this part of the country, with most of the principal steamboat owners, both here and at Cincinnati, Ohio, giving their opinion relating to the necessity of building a steamboat expressly for that purpose, and of their opinion of the work done last year under my superintendence; also, the certificate of the four gentlemen who assisted me in that work, with two other sub-assistants, relating to the utility and effect of the four machine boats built last year, and used for the removing of snags, sawyers, &c., spoken of by Mr. Paul Anderson in his communication to the department, through Captain Chase, of the corps of engineers, a copy of which has been forwarded to me.

The steamboat now building will be completed by the fifteenth day of December next, which is as soon as it was possible for me to contract for such a boat. She will be built of good materials, the workmanship good and plain, and for as small a sum as such a boat can possibly be procured in this part of the country; as there will be nothing belonging to her whole construction that is not absolutely necessary to render her effectual in the service for which she is intended. I have entire confidence in all the mechanics with whom I have contracted, and their securities furnished in their bonds are all responsible men. If those contracts are complied with in point of time, I hope to be enabled to get the boat into the Mississippi river in December next; in that event, if the winter is not an unusual one, I expect to be enabled to improve the navigation of that river in many

of the most dangerous places during the winter. I have every confidence in the capacity of that boat to effect the object intended, with great facility.

I shall have the assistance of Captain John Sowers again this year, whose experience for the last two years in that business has qualified him in such a manner as to make his services very valuable. It will be necessary for me to make at least twovisits to New Albany between the time I leave for the Mississippi and the completion of the steamboat building at that place, during which time I shall leave the superintendence of the work to that gentleman.

My estimate furnished for the expense of buildirg a steamboat, under date of the seventh of January last, estimated the carpenter's, joiner's work, four tons of bolt iron for extra fastening, and blacksmith's work, at $10,200; the contract with Messrs. Telon & Homes, a copy of which I herewith forward you, is for $11,000, that contract includes those four items. In that estimate the addition of eight hundred dollars is accounted for in the difference in building below the Falls of Ohio and at Cimcinnati. The contract with Mr. Harkness, of Cincinnati, Ohio, for seven thousand one hundred dollars, and Mr. Garret McCann, of New Albany, Indiana, for four thousand one hundred dollars, for the engine and boilers, differs from the estimate above alluded to twelve hundred dollars, accounted for in the same manner as that with Tellon & Homes; the other items in that estimate will cover the expense of the construction of the boat. The balance of the funds required for the construction of said boat, you will please to forward to me as follows: for the payment of the contract with Mr. A. Harkness, you will cause to be deposited to my credit in the Branch Bank of the United States, at Cincinnati, Ohio, on the fifteenth of August, or as soon thereafter as practicable, $1,000; on the fifteenth of Septembpr, October, and November, a like sum of $1,000 at each of those periods, and on the fifteenth of December, $2,100; of which you will please advise me at Louisville, Kentucky.

You will also please to cause to be deposited to my credit in the Branch Bank of the United States, at Louisville, Kentucky, for the purpose of paying the contracts with Messrs. Telon & Homes for the boat, and Mr. Garret McCann for the boilers and for fitting out said boat with tackle, furniture, &c., per estimate, the following sums: on the first September next, $2,500; on the first October next, $2,500; on the first November next, $2,000; and on the first December next, $2,400, making, together with the ten thousand dollars forwarded me under date of the 27th of June last, $25,500, applicable to the construction of the steamboat authorized to be built by your letter of that date. I beg leave to remind you of the necessity of making the remittances above stated, on or before the specified times at which they will be required, as a failure will be the means of a forfeiture of the respective contracts on my part; consequently I shall lose my claim on the contractors for a forfeiture on their part of said contracts.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

CHIEF ENGINEER, *Washington, D. C.*

BUREAU TOPOGRAPHICAL ENGINEERS,
December 10, 1857.

I certify that the within and foregoing is a true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 13.

PENSACOLA, *June* 18, 1829.

SIR: I have the honor to transmit herewith, a report on the present condition of the *Bayou Pierre* route around the Great raft of Red river, together with an approximate estimate of the cost of rendering it navigable for keel boats, made in obedience to your orders.

The distance from the head of Coschotta chute above the raft, where the route leaves Red river to their confluence below the raft, four miles above Grandechor, does not exceed two hundred miles; the distance between the same two points by the old river route is upwards of two hundred and ninety miles. These distances were procured from persons constantly navigating the route, and from my own estimate, founded upon the time taken up in passing over them. The proportion which the several parts bear to the whole will be more accurate, as each distance was accurately timed.

Bayou Pierre, at its entrance into Red river, is a broad and open stream, and maintains this character without interruption to Spanish lake, and with the exception of the chute by which it is discharged from this lake, its current is comparatively moderate. Near this chute are two bars of soft stone, which at the lowest stage of the bayou, have not more than twelve inches of water.

Above Spanish lake, the current becomes more uniformly rapid, and continues so, with few exceptions, to lake Bayou Pierre, a distance of seventy miles. The obstructions in this section of the route are: One hundred and sixty-seven stumps and snags, three hundred and eighty-six projecting trees. These trees generally grow on the edge of the bank, their trunks resting on the surface of the water, and their limbs extending far into the stream. Keel-boats, to avoid them, are compelled to cross the channel.

Bayou Pierre lake is thirteen miles long, and traversed near its head by a cypress brake, extending entirely across it. To open a sufficient channel through it, will require the removal of one hundred and twenty green cypress trees, ten stumps, and several bunches of small willows. The current in the lake is scarcely perceptible; there is a sufficiency of water at all seasons for keel-boats. There were fifteen feet of water on the bar at the inlet to Bayou Pierre lake at the time of my examination; my pilot had never found less than five feet at lowest water. The bayou by which I left Bayou Pierre lake is extremely narrow at its mouth, deep, and has a moderate current. It is rendered narrow by a thick growth of small willows, standing in from ten to fifteen feet of water; their number it was impossible to

ascertain. The bayou continues narrow for a mile and a half, when it expands into a broad stream. Besides the willows, nine stumps and one small raft are to be removed.

For the ten succeeding miles the stream continues broad, and the current moderate; thence into Connisuca lake, a distance of one mile, the stream is rapid. The last eleven miles contains twenty snags, and seventy-two projecting trees, and twelve small rafts, all of which will require removing. These rafts were probably formed by floodwood brought down Pascagoula bayou, which leaves old Red river and falls into Bayou Pierre two miles below Connisuca lake. This lake is twelve miles in extent, with a moderate current and deep water; it is obstructed by forty green cypress trees, and twenty bunches of small willows, the removal of which will form a direct channel through the lake. Connisuca is supplied with water through a broad, open and rapid bayou. This bayou has a bar at its mouth, with twelve feet water at the time of my examination, and never less than two according to my pilot.

The first five miles from the mouth of the bayou, are obstructed by two small rafts and thirty-nine projecting trees. For the next six miles it swells into a broad, straight, and extremely rapid stream. In this section the water was on a level with the bank, and only two and a half feet below the highest water mark, whereas below in many places, where the water was more confined by high banks, it was fifteen feet below high-water mark. This portion of the route contains eighty projecting trees, twenty-eight snags, and two small rafts. The bayou here forks, and assumes a different character. I have selected the branch running along the bluff. The other fork is narrow, rapid, and obstructed by numerous small rafts. For the first twelve miles the bayou is not so broad as the river below it. The current is moderate. For the next three miles the bayou expands and becomes rapid. The last fifteen miles contain two hundred and twenty-six dead cypress trees standing in the stream, one hundred and forty-four snags, nineteen projecting trees, and ten small rafts.

Entered Morris lake, a narrow open lake, five miles long, the current, except a chute of one hundred yards in extent, is moderate; this lake will require no clearing.

The bayou communicating between Morris lake and Grass lake is seven and a half miles long, very broad, deep, and straight; its current is moderate and obstructed by one hundred and seventy-eight cypresss trees, only a small portion of which are green; the rest are entirely dry, and will be easily floated off when cut. Besides these trees, are thirty stumps, five projecting trees, and fifteen rafts. None of these rafts extend entirely across the stream, nor are they very large. They contain from twenty to one hundred and twenty logs lodged against the standing trees, and will be readily removed by cutting them away.

Grass lake, at the head of the bayou, is four miles long, and differs very little in its character from the bayou. It has a bar of a mile wide at the outlet, with three feet water at the lowest stage. The rest of the lake has ten feet at all seasons. There are one hundred and three dead cypress trees, thirty-one stumps, and four bunches of willows to

be removed, and, as my pilot informed me, many concealed stumps, which will be exposed at low water.

From this lake to Old river, a distance of four miles, the navigation is much obstructed. In the first three-quarters of a mile it is very narrow, owing to the growth of small willows similar to that at the head of Bayou Pierre lake. They stand in deep water, and will be easily removed when the stream is low. Above this the bayou becomes broad and open, and continues so for a mile and a quarter, when its breadth contracts, and the current to its junction with old Red river becomes very rapid. The obstructions between the lake and river are one hundred and sixty dead cypress trees, thirty-one stumps, five small rafts, and seventeen bunches of willows. This is the head of what is properly called Bayou Pierre.

After following the course of old Red river half a mile, the route strikes out into Lake Cut-off to avoid an immense raft in the bend of the river. Lake Cut-off is about half a mile long, and is situated on a point formed by a bend in the river, with which it communicates above and below the lake by small canals. It is dry except when the river is forced over the banks by the raft at high water. The chute, by which the waters of the lake are discharged, is the most rapid stream on the route, its extent does not exceed fifty yards. It will be necessary to deepen the channel through Lake Cut-off, and to open a new canal into the river above the raft. The present one is situated immediately above the raft, and is constantly liable to be filled with drift. The head of the raft already extends above its mouth, which is with difficulty opened by each boat successively as they pass through. The new canal should be located at the foot of the bluff, about a fourth of a mile above the present one; it will then open into the best water in the lake, and be exempt from the inconvenience of drift wood; its length will be about fifty yards.

For the next eight miles the route follows the bed of the old Red river, which is broad and unobstructed, except by six or eight stumps, against which several trees have lodged, forming two small rafts easily removed. The current in the river is moderate.

The passage from old river to Cass lake is through the Bayou Shrodo, the distance twelve miles. For the first three miles the current is very rapid, and the pass much obstructed by trees which have fallen in from the banks. The remaining part of the bayou is broad, with scarcely any perceptible current. According to the information of my pilot, there is never less than fifteen feet water in this pass. At present there are twenty feet.

The obstructions of this section of the route consist of three hundred small trees fallen in, thirty snags, and sixty small rafts, composed of from one to four trees lodged against the limbs of those fallen in. The route does not enter Lake Cass, but crosses its head, and at three miles distance enters Lake Shrodo. The bayou from Cass lake to Lake Shrodo is entirely open, broad and a moderate current; its course is along an extensive bluff. From the head of Bayou Shrodo to the foot of Coschotta chute, the distance nearly in a right line, is fifteen miles. No obstructions to an easy navigation occur in Shrodo lake. It is deep and scarcely any current.

In passing from Lake Shrodo there is a bar of soft mud half a mile in extent, which, at low water, is nearly dry. The bar is covered with small willows and a very few small green cypresses. After crossing the bar, the first mile and a half the current is moderate, the pass narrow, and resembles the inlet to Bayou Pierre lake. Like that inlet, it is filled with small willows. At low water this section is shallow. For the next mile and a half the bayou is broad, deep, and extremely rapid, when it again becomes moderate for half a mile, where it is crossed by a bar sixty yards in extent, with eighteen inches water at the lowest stage. Above this bar the bayou becomes broad and deep for a mile and a quarter. In the next half mile the bayou is narrow and deep, but obstructed with willows; thence to old Red river, three fourths of a mile, it is broad and deep, obstructed only by a small raft at head of the chute.

It will be perceived that the Coschotta chute is composed of a succession of broad and narrow bayous. The broad parts are nearly parallel to each other, and perpendicular to the course of old Red river; the narrow ones run parallel to old river, thus connecting the several broad streams. The open sections of this chute were probably formed by an accumulation of water from Red river at a high stage, which excavated a channel for itself, until meeting with a thick cypress brake, the stream was divided and found its way to the lake by numerous routes. Several of these smaller streams uniting with other chutes below the cypress brake—for in that part of Red river the whole country is inundated at high water—form a large and open stream until it is again scattered by a similar impediment. The great labor in opening Coschotta chute will consist in joining the large sections. The obstructions in this chute are, six hundred large green cypresses, seventy dead cypress stumps, one small raft, and the bars above mentioned. The Coschotta chute is the most feasible route from Red river to Lake Shrodo. There is another thirty miles further up, but it is so entirely obstructed by drift and trees as to be considered wholly impassable even for small boats. Owing to this circumstance I did not attempt its examination. My pilot had made an unsuccessful effort to pass it in a pirogue. It can be thoroughly examined only at very low water.

Such as I have above enumerated them are the obstacles at present impeding the navigation of the Bayou Pierre route around the Great raft of Red river.

The cost of removing them I have estimated as follows:

From the mouth of Bayou Pierre to Bayou Pierre lake.....	$2,000 00
Thence to the foot of Norris lake.....	2,800 00
From Norris lake to Old river.....	2,500 00
Canal across Lake Cut-off.....	1,500 00
From Lake Cut-off to Shrodo lake.....	875 00
To open Coschotta chute.....	10,000 00
Keel-boats, skiffs, and the necessary implements for removing bars, logs and trees.....	1,500 00
	$21,175 00

The proper season of the year to commence the operations is the fall, when the waters are low. At that season most of the trees and stumps may be removed without difficulty, and being cut off on a level with the lowest water will form no impediment to keel-boats, when the waters of old Red river are sufficiently high above and below the raft to admit of their passage.

Though the fall is the most favorable season for commencing the proposed improvements, I would suggest the propriety of immediately making deposits of provisions, while the waters continue high, at suitable positions on the Bayou Pierre. Should it be delayed till low water, if it be then not wholly impracticable, the transportation will be attended with an enormous additional expense. The charge at present of boats navigating the Bayou Pierre route is three dollars and a half per barrel to the head of the raft.

It will be necessary to purchase a keel-boat to transport laborers, and to serve as their habitation while engaged in the improvement. This boat, if put in active operation before the waters subside, will transport provisions at a less expense. Suitable positions for depots are to be met with frequently on the route. The agency house, eight miles above the mouth of Coschotta chute on Lake Shrodo, will afford a most secure and convenient depot for those provisions which will be required on that portion of the route between Lake Cut-off and the head of the raft. The bluffs by which each lake is bounded on its lower side will afford other points at which temporary deposits may be made.

The proper implements for removing the rafts, trees, and snags, are axes and saws; these, at low water, can be used to advantage. I beg leave to recommend to the department in the strongest terms the necessity of commencing the proposed improvement immediately. The head of the raft has already extended above the bluff on the left bank of the river, and is now within fifteen miles of the head of Coschotta chute, and, according to the estimate of an intelligent writer on this subject, is progressing at the rate of one mile annually. Should it reach this point before the chute is opened, it would render the opening of it, if not impossible, a labor of much greater magnitude than it is at present. I would also suggest the importance of making the channel from the old river to Shrodo lake as large as the existing appropriation will allow. The manifold advantages of a broad and open communication with the lake are self-evident. In my estimate I have limited the breadth of the channel to forty yards, and have designed that some deviation from the most open route should be adopted with a view to straightening the channel, as well as to diminishing the distance to the lake, both of which will be of the utmost importance in preserving it from future obstructions. The Coschotta chute once thoroughly opened, the flood-wood, when the raft shall have reached its head, will pass with facility into Lake Shrodo, which will furnish a reservoir capable of containing the drift-wood of a great number of years.

Another circumstance is extremely favorable to the permanence of this channel should the chute be effectually opened. It is this: The waters of the lake are discharged into a broad sheet several miles

wide, and pass into Lake Cass through a thick willow swamp, so thick as entirely to interrupt any drift-wood which may pass the Coschotta chute. Bayou Shrodo, which forms the navigable communication between Lake Shrodo and the old river below Cass lake, winds its way along the bluff and crosses the current below the willows. The current of Shrodo bayou is sluggish, and consequently draws no wood.

A reference to Major Birch's map will illustrate what I have said. The point of land on the west of the line I. S., and between bayou and Lake Shrodo, at the lower end of that lake is covered with willows through which the lake pours its waters. Should, however, any drift find its way into the bayou near the bluff, that stream, being broad, deep, and entirely open, will conduct it down to the opening into Cass lake, whither the strength of the current will at once attract it; this is then another grand reservoir. I have selected bayou Shrodo in preference to the route which Major Birch followed through Cass lake, on account of the number of dead trees standing in that lake which would require moving; and on account of the tendency of the drift to enter the lake rather than Shrodo bayou. The chute at the mouth of Shrodo bayou is less rapid and more open than that which forms the outlet of Cass lake at its lower end. The bed of Old river, between Shrodo bayou and Lake Cut-off, will require no improvement.

This lake (see No. 10 accompanying sketch) is the next point demanding particular attention. I have estimated for a canal twenty yards wide and eighteen inches deep at low water. A few years will, in all probability, wear this canal as deep as the river, the earth being of that loose red soil which every where forms the banks of the old river. The bluff below this lake will afford facilities to laborers employed in clearing the section immediately below, which will require much attention to render its navigation safe, even after the obstructions are removed from the channel, on account of the rapidity of the current and the many and abrupt turns in its direction.

The head of Bayou Pierre lake is the only remaining section the clearing of which will be attended with serious difficulty. The cypress trees which obstruct this part of the navigation, are many of them red cypress, which will not float; their removal will consequently be attended with much labor. Its distance from a suitable bluff for an encampment will add to the difficulty. From Bayou Pierre lake I examined two routes, one leading along the bluffs, the other running more directly through the swamps.

Piccan, a dead bayou, the first of these routes, is thirty miles long, and almost entirely closed up with small trees and dead cypress. It is traced on the accompanying sketch between the points A and B., as nearly as the disproportion of the map will admit. The bayou through the swamp is eighteen miles long, broad, and deep; its current is more rapid than that of Dead bayou, and owing to its being almost unknown, it has hitherto been less navigated. The two unite near Iron mountain. No other obstacles worthy of particular notice occur between this and the mouth of Bayou Pierre.

Owing to the high stage of water, I was unable to make critical soundings, except at a few of the most important points.

Bayou Pierre will never afford a safe navigation for steamboats, on account of the rapid currents which generaly occur where the bayou makes a sudden turn; this, combined with the narrowness of the channel, will render the descending navigation extremely dangerous; but, though attended with much difficulty and hazard, it will by no means be impossible, should the proposed improvement be carried into full effect. Once properly opened, the constant intercourse between Natchitoches and the immense fertile region above, which is now almost abandoned from the difficulty of navigating the river, will prevent its ever again becoming stopped with drift. Should the season prove a favorable one, I have no doubt the improvement will fall within the estimate; in any event, within the existing appropriation.

I take this opportunity to acknowledge myself indebted to Lieut. Seawall, who accompanied me in my exploration, for much valuable information on the subject of keel-boat navigation, derived from his experience, he having frequently passed from Natchitoches to Cantonment Towson through the east route around the Great raft.

I have the honor to be your obedient, humble servant,

A. H. BOWMAN,
U. S. Engineers.

Capt. W. H. CHASE, *Corps of Engineers.*

BUREAU OF TOPOGRAPHICAL ENGINEERS,
December 6, 1856.

A true copy of the original on file in this office.

J. J. ABERT,
Colonel Corps Topographical Engineers.

No. 14.

LOUISVILLE, *July* 22, 1829.

SIR: Herewith I forward my account current, up to the present date, with vouchers from No. 1 to 39, as follows, viz:

No. 1. My passage from Trinity to Louisville. This expense was necessary, as I was obliged to visit Louisville at that time, for superintending and directing the building of the steamboat for removing snags, &c. from the Mississippi river.

No. 2. Contract price for the carpenter's and joiner's work of the steamboat.

No. 3. Contract price for steam boilers.

No. 4. This expense I deemed necessary, the better to secure the safety and expedition in launching the boat, as this day was the first and last, in the present year, that the boat could have been launched, in consequence of the lowness of the water, which has not been sufficiently high to have launched that boat at any other time, and then 22 feet 6 inches below the usual high water in the Ohio river, in the spring of the year. Under these circumstances, I hope this charge will be admitted.

No. 5. Passage of Mr. J. C. Blair, from Vicksburg to Sucking creek, at the end of last year's work on the river.

No. 6. Benton & Tomlinson's bill for chairs, and blacksmith's work for the machines for hoisting snags, &c., on the steamboat.

No. 7. Bill for chairs for use of steamboat.

No. 8. B. Laurence & Co's bill, for 35 hogsheads of bacon.

No. 9. Contract price for the engines for the steamboat.

No. 10. The castings named in this voucher are for fly-wheels, not included in the contract for the engines. The two small engines are attached to force pumps, to be used in supplying the boilers when the main engine is employed in raising a snag or log, and cannot be worked fast enough to throw a sufficient quantity of water to supply the boilers. They are indispensably necessary for the safety of the boat.

No. 11. P. R. Gray's bill, for pork and tallow furnished.

No. 12. Samuel Bell's bill, for molasses furnished.

No. 13. C. D. Howell's bill, for spyglass.

No. 14. Jesse Read's bill, for tables for steamboat.

No. 15. Tillay, Bullen & Co's bill, for freight on sheaves, which were transported up from White river, from the machine boats used last year, to be now used on board of the steamboat.

No. 16. G. W. Barclay & Co's bill, for articles furnished, as per bill.

No. 17. Pay-roll: these men were all necessary in building and finishing the steamboat.

No. 18. Gray & Stewart's bill of oil, for use of the steamboat, for oiling engine and for lamps.

No. 19. William Millais's bill, for iron furnished, for sheeting the decks of the steamboat in front of the boilers, and for extra fastenings for the same.

No. 20. John C. Buckler's bill, for iron. This iron has been used for lining the bows of the steamboat, to prevent snags, &c., from bruising the plank and timbers.

No. 21. J. B. Bowle's bill, of linen for awnings, and furniture for steam and flat boats.

No. 22. This bill is for furniture and tools, for the use of the steamboat.

No. 23 John H. Philip's bill, for making awnings, and painting for steamboat.

No. 24. Blair & Colman's bill, for the necessary pumps and pipes to convey water from the hold of the boat, and for cooking stove for the steamboat, with furniture, &c., for boat; and for lamps for engine house, &c., as per bill.

No. 25. Two flat-boats, to be fitted up for the quarters of laborers at the Grand chain.

No. 26. Graham & Ferguson, for boards for fitting up flat-boats for laborers for the Grand chain, and for the Mississippi river.

No. 27. Bill of freight on sundry articles belonging to the furniture, &c., of the flat-boats for the laborers; it was necessary to ship them up to New Albany, to accommodote the men on their passage down the Ohio, from Albany and Portland to the mouth of Ohio river.

No. 28. Bill for deck-buckets for the steamboat.

No. 29. For labour.

No. 30 Wm. G. Armstrong's bill for storage of articles belonging to the United States, left with him by William Courtney. The whiskey credited in that account, was a part of that property; the price you will find the same as that charged in G. W. Barclay & Co's bill, (No. 16.) It has been used by Mr. Armstrong.

No. 31. For labour.

No. 32. For caulking skiff.

No. 33. For labor.

No. 34. For boarding laborers.

No. 35. For boarding laborers.

No. 36. For five flat-boats, four to be fitted up for quarters for men, on the Mississippi river, and one for a blacksmith's shop, for the Grand chain.

No. 37. Furniture for the steamboat, and one flat-boat for the Grand chain, one long boat, and one jolly-boat for the use of the steamboat, and for lumber for the wheels, and for making the same.

No. 38. Wm. Bowman, pilot, for taking the flat-boats used by Mr. Courtney over the falls of the Ohio.

No. 39. Tillay, Bullen & Co's bill for shovels and canvas, the canvas for use of the rigging of blocks, &c., for steamboat: amounting in all to $30,107 35, leaving a balance in my hands of $32,728 20.

The steamboat has been ready to proceed down the river since the 1st of this month, at which time her engine was completed, but is still detained, on account of the low stage of the water in the river, a circumstance which has not occured at that time of the year for twenty years, with the exception of one year. The boat draws five feet six inches water, and does not vary one inch from the calculation made for draft of water, when commenced. Since the 15th of June, there has not been exceeding four feet of water on the bars in the Ohio. However, the river may yet rise to let her go out, before the 1st of September; if not, I shall not be able to use her this fall, until a rise of water—a circumstance which I shall regret extremely, notwithstanding I have done all in my power to get her ready as early as possible. I was prevented from launching her six weeks after she was ready, for want of water. There was but one rise of water this year, in which she could be launched, and that occurred at the time she was launched—the 28th of April.

All possible industry was used after that period to finish her in time to go down before the water was too low. When she gets out of the Ohio, I feel very sanguine, she will do me much credit. I have not a doubt of her performing equal to my most sanguine expectations. My preparations for the Grand chain are in a state of forwardness, and will be ready for the low water, and, from present appearances the season will be uncommonly favorable for that work. If it should be so, I shall in all probability finish that improvement this year. I am also making arrangements to work 300 men on the Mississippi sand-bars and island chutes, which, I am in hopes, will very nearly complete that work, if the water does not rise in that river earlier than usual. For the articles of provisions, &c., purchased and charged in the accompanying account, you will be furnished with receipts for their delivery as soon as they are sent on board of the different boats,

and delivered to the assistant superintendents at the head of each party, which will take place in all the month of August next.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS.
December 10, 1857.

I certify that the foregoing is a true copy of the original, on file in this office.

J. J. ABERT,
Colonel corps Top. Engineers.

No. 15.

OFFICE M. R. IMPROVEMENTS.
Louisville, April 24, 1848.

I have the honor to be in the receipt of your instructions of the 15th inst , agreeably to which I have been required to report upon a certain "memorial of Henry M. Shreve, in relation to the removal of snags, sawyers, &c., from the great western rivers, by the use of his patented steam snag-boat, with special reference to the value of this improvement, and of its advantages to operations in the western waters."

SEC. 2. In offering my views and opinions on the document to which my attention has thus been directed, the remarks I have to make will be restricted to a brief discussion of a few of the leading topics, in relation to which my information has been derived from the statements contained in the memorial and its appended pamphlet; from records and files of this office, and from sundry personal observations and inquiries occasionally made in relation to this subject. In the absence of authentic intelligence from other sources, the comments to be offered must necessarily be brief, summary, and limited, in accordance with the paucity of well-authenticated details of evidence at my command, in relation to the subjects of inquiry presented for consideration.

SEC. 3. The memorial in question is predicated on allowances or indemnities claimed by the memorialist, for the use of "a new and useful machine for the removal of trees, roots, logs, &c., (called snags and sawyers) from the beds and channels of rivers, invented by the memorialist, and called the *Archimedes*, or *Steam Snag-boat*," for which he received letters patent of the United States, as set forth in his memorial bearing date on the 12th of September, 1838.

SEC. 4. On the first page of the memorial, Henry M. Shreve, the memorialist, adverts somewhat disparagingly to a method devised by John Bruce, in 1824, having for its object the removal of snags, &c., from rivers. He also adverts, in a similar manner, to the operations of that gentleman on the Ohio river, by the use of the method allud-

ed to. These allusions are no doubt made in reference to the adoption and use of an invention devised by Mr. Bruce, and submitted to the Board of Engineers, (General Bernard and Col. Totten being at that time members of the board,) for which, with the sanction of the War Department, this board awarded to the inventor the generous premium previously offered, in a public manner, for the best method of removing obstructions from the beds of the western rivers. The invention of Mr. Bruce contemplated the use of twin boats, with windlasses and other purchases, to be operated either by manual or steam power, I know not which. On page 16 of the pamphlet appended to the memorial, and in direct reference to the invention just mentioned, Captain Hughes remarks that Mr. Bruce's "plan seems to differ materially from that patented by Captain Shreve, and to have indeed but little in common with it, excepting the *twin hulls*, the *application of steam*, and some of the mechanical powers in general use, none of which are claimed by Captain Shreve."

SEC. 5. On the same page (meml. p. 3) the memorialist claims the invention of a "machine for sawing off snags and sawyers under water, which consisted of a *twin boat* connected with a wheel and windlass, worked by manual labor," this invention having been devised by him "as early as 1821." He further observes (meml. p. 4) that "after his appointment" (January 2, 1827,) "he was soon satisfied of the insufficiency of this invention," also that "he then turned his attention to the subject, and after much thought the idea of the twin *snag-boat* occurred to him.

In the pamphlet before cited (p. 16) Captain Hughes observes, "that Prentice and Bruce both recommended plans, in 1824, for the extraction of logs, &c , from the beds of rivers, by the application of *steam power*," and further states, that "Captain Shreve did not concur at that time (1824) in the opinion of the practicability of effecting this desirable object," by dragging the trees from the bed of the river, but that he, Captain S., proposed to saw them off six or eight feet below the surface of the water at its lowest stage." From these, as also from other showings of similar import, contained in the memorial and pamphlet, it is manifest that the idea of a *steam snag-boat with twin hulls* did not originate with the memorialist "as early as 1821," nor at any subsequent date prior to 1827, when, from his own admission, his attention was first turned to the subject."

SEC. 6. On the fourth page of the memorial the memorialist remarks, that "in October 1827, and repeatedly afterwards, he suggested and urged the policy of using *boats propelled by steam;*" and on page 5, he further states, that, in accordance with an estimate furnished by him, "he was authorized to build the steam snag-boat Heliopolis, which was finished by him on the 22d of July, 1829." Hence it is obviously inferable that this boat was built in conformity to the direction and at the expense of the government. Yet, on the the same page, a little further down, he states, apparently in allusion to the same boat, "that said machine boat was invented and perfected entirely at his own expense before he offered to the War Department to build a boat of the kind for the government use, consequently the department incurred no expense or risk in said invention." In

this case, the construction of the *model* of the *snag-boat* are obviously blended together, both implying one and the same structure. At any rate, there is much obscurity or want of perspicuity in regard to the preparation and cost of the "*original model*" to the time when it was prepared, and to the use made of it in the construction of the Heliopolis and other snag-boats mentioned, all of which are represented as having actually occurred prior to the construction of the boats. A full showing in regard to these matters might readily have been made, and would have a tendency to throw much light upon the subject; in the absence of which, it is difficult to discover the purport and meaning of the remarks.

SEC. 7. On the page last cited (p. 5,) the memorialist states, that "in February, 1833, he was instructed by the Secretary of War to commence the removal of the Red river raft, and after laboring five years upon the raft, he succeeded in removing it." The accomplishment of this great object reflects great credit not only upon its projectors, but especially upon those by whom it was executed, among the latter of whom were many distinguished operators entitled to equal credit with the former. Of the executors of this Herculean task, none was more conspicuous for skill, ability, and perseverance, than Captain A. Tyson ; and none is more deserving of high applause and generous remuneration than that distinguished mechanic and gentleman.

The idea held forth in sundry parts of the memorial and its accompanying documents, that the invention claimed by the memorialist was either essential or indispensable to the removal of the Red river raft is, in a high degree, if not altogether, erroneous and fallacious. A very large proportion of this work, probably at least ninety-nine hundredths, was performed by means of single-hull boats, or common steamers, hand machine-boats, quarter-boats, &c. There were but very few deeply imbedded snags to be raised, and their removal was for the most part effected by the use of the craft just mentioned. Throughout the immediate region of the raft, the artificial openings made through it were generally too small to admit the successful operation of the twin snag-boat. The class of boats best adapted to the breaking up and removal of rafts like those of Red river, is materially different from that to which the snag-boat patented by the memorialist belongs, and will be more particularly considered in the sequel.

Hence, the invention of the twin snag-boat has contributed but little to the accomplishment of the gigantic work above considered, although much of its value and importance has been predicated on the benefits resulting from its employment in that service.

SEC. 8. The residue of the memorial (page 6 to 13) contains a variety of views and opinions in relation to the pretensions of the memorialist, and to the validity of his claims to the invention of the twin snag-boat. References to, and copious extracts from numerous, reports of Congressional committees and distinguished public officers and other functionaries of high respectability, have been introduced for the purpose of corroborating the claims of the memorialist, not only to priority of invention and construction, but to what I regard as

an exorbitant remuneration for the past, present, and future use of the twin snag-boat. The opinions advanced in most of these extracts, seem to be predicated on the erroneous assumption or supposition, that the twin boat patented by the memorialist is to be regarded as a *nonpariel* or *sine qua non*, in the prosecution of the snag business, or removal of obstructions to the navigation of the western rivers, not only for the past, but for all future time. In almost every instance the merits of the invention are set forth in the most engrossing manner and in the most favorable light. With respect to the correctness of these opinions, or rather of the data on which they have been based I shall treat more fully hereafter, and must refer to evidence to be adduced and exhibited in the sequel of this paper.

SEC. 9. Letters patent in favor of the memorialist, and covering the improvements claimed by him as new, useful, and original, appear to have been issued in usual form on the 12th of September, 1838, more than nine years after the completion of the first twin snag-boat, which, as before stated, was accomplished on the 22d of July, 1829.

The specification in the patent embraces not only the particular improvements claimed as before mentioned, but a great variety of modifications, parts, and appendages, common to snag-boats, ordinary steamers, and other craft, in reference to which no specific claim is set up. Agreeably to the instrument now under consideration, (see memorial, page 6, and appendix pamphlet, pp. 21 to 25.) "The indenture claimed and desired to be secured by letters patent," consists of, or embraces three distinct counts or items, of the following import, viz:

1st. "The manner in which I (the memorialist) have combined and connected the mechanical power of the windlass and the pulley, so as to co-operate with the momentum given to a twin steamboat, and with the continuous action of the paddle-wheels so as to break off, uproot, and raise snags and sawyers.

2d. "I, (the memorialist) however, particularly claim as new the application of the forward or snag-beam, for the purpose of raising or breaking the snag or sawyer preparatory to its being lifted on board the boat by the apparatus constructed for that purpose.

3d. "I (the memorialist) also claim the manner of connecting together the two boats by means of the upper and lower tier of beams, diagonal braces, bulk head and forward beam."

The foregoing counts cover the specific claims set forth in the patent of the memorialist.

The drawings annexed to the memorial and pamphlet, fail to exhibit all the details necessary to a clear understanding of the combinations, relations, or arrangements of parts, as claimed under the foregoing specific counts, and the resemblance or identy of the combinations, parts, &c., described therein with those in present use on board of twin snag-boats.

The first and second counts, in particular, are too vague and indefinite to admit of any satisfactory conclusion as to the nature and scope of the claims therein set forth, as also the novelty and originality of the invention in the respects therein considered. The combinations and arrangements contemplated as above, are appa-

rently so simple in their character, so obvious in their mode of application, and so common in their use in connexion with river operations, that they would be likely to suggest themselves spontaneously to any river man of ordinary skill and experience in the construction and management of snag-boats and other river craft.

SEC. 10. With respect to the 2d count, which relates to the introduction of the "snag-beam," I am decidedly of the opinion that this appendage is of great value and importance to the twin steam snag-boat, and that, agreeably to the best information I can obtain, its introduction and use are due to the memorialist. At any rate, it would be very difficult to controvert the latter opinion in this case, since the claim appears to have been corroborated by the oath of the memorialist; and there does not appear to be any adverse claimant to contest his right to the invention. So essential is the snag or butting, beam to the efficient and successful operation of the twin steam snag-boat, that a boat of this class would have been of little use or value without such an appendage.

SEC. 11. In regard to the twin snag-boat above considered, and especially to its adaptation to the western river improvements, it should be remarked, that its working draft, (or rather the depth of water necessary to its operation,) varies from three and half ($3\frac{1}{2}$) to six (6) feet, the least of which is often too great, particcularly in low water stages, for successful operation in either of the following rivers, viz: the Missouri, the upper Mississippi (above the mouth of the Missouri,) the Arkansas, the Red, and the Ohio rivers. In higher stages, when the depth in the main channels, across the sand-bars, amounts to five or six feet, boats of this description may operate to advantage; their period of operation being confined to season proper for carrying on the snag business in each of the rivers, and their ability to operate being limited by the duration of these stages, which, especially in the Missouri, seldom continue more than two or three months, and in some years not more than two or three weeks.

On other occasions, and especially when there is a depth of three to five feet only in the channels, snag-boats drawing two to two and a half feet only, are undoubtedly far more serviceable, and indeed are the only boats that can operate to any advantage in the rivers above designated, in very low stages. These inferences are obvious, from the fact, that boats of light draft can approach very many snags in shoal water that would be utterly inaccessible to boats of greater draft. Hence it has been deemed advisable to adapt light draft snag-boats of a construction differing materially from that of the twin snag-boat, as a far more suitable craft for the improvement of the particular rivers above designated.

There can be no doubt that the twin snag-boat can be rendered far more powerful than boats of lighter draft, and consequently that obstructions, of the most obstinate and formidable character, may be raised and removed by the former, when a similar operation could not be performed by the latter. Cases of this sort, however, are comparativelyvery seldom to be witnessed. For example, in the Missouri and lower Mississippi, among the snags that cannot be removed by a light draft snag-boat, there may be one in fifty; in the upper Missis-

sippi, Arkansas, and Ohio, one in five hundred, and in Red river one in five thousand.

SEC. 12. The light draft snag-boats alluded to as above, are very different from twin snag-boats, contemplated in the memorial, both in their construction and mode of operation. Each boat has a single hull only: a broad or scow bow, and a powerful bow transom, which serves instead of a butting or snag-beam. The hull is strongly and substantially fortified in all parts, by means of truss-frames, bulk-heads, double planking, &c. &c. Two large and powerful derricks of timber rise from the hull, near the extremities of the bow transom, their tops serving as points of suspension for the tackle employed in raising the snags. The power for raising the snag is communicated from the main water-wheel shaft, through the tackle, which is very large and strong, to the snag, which is forced from its moorings by the combined operation of butting and dragging, in a manner somewhat analogous to that exemplified in the use of the twin snag-boat. The light or single hull snag-boat draws from twenty to thirty inches only, when in trim for service; runs with greater speed; is worked at far less expense; and is better adapted to low water service in the upper Mississippi, Missouri, Arkansas and Ohio, and especially in Red river, than the twin snag-boat of the memorialist, while the cost of the latter is more than double that of the former.

The light draft snag-boat, to the best of my knowledge and belief, was devised and planned in conformity to the joint counsel of Captains Russell, Tyson, and Dillingham, whom I regard as the original inventors. Of this class of boats, two only have as yet been constructed, viz: the Gopher, built in 1843, under the personal supervision of Captain J. W. Russell, and the Dragon, built in 1844, under the direction of Captain A. Tyson, both on the same general plan, but differing from each other in many of their details of construction.

SEC. 13. I feel it incumbent on me to remark, in this connexion, that among the snag-boats constructed by direction of the memorialist, in the latter part of his term of service, there was a single hull snag-boat called the Eradicator, the utility and efficiency of which is somewhat questionable, especially insofar as relates to the uprooting and removal of deeply imbedded snags. The draft of this boat is said to have been a little over four feet. It was furnished with an apron or snagway at the bow, somewhat resembling the bulk-head mentioned in the 3d count of his specification, as before cited. It was also furnished with a wheel and windlass, which, however, could not be made to operate to much advantage, in raising and removing snags, &c. In order to render the boat more useful and efficient, strong vertical derricks, with powerful tackle, were substituted in place of wheel and windlass, at the instance, as I have been informed of Captain Tyson; after which the boat operated far more favorably. In 1841, it was put on service in Red river, on which it had I believe previously worked, and for which it was originally intended, having been deemed better adapted to that service than any at that time or previously in use. To this boat, however, no allusion appears to have been made, either in the memorial or accompanying pamphlet, nor do I know of any claim set up by the memorialist or any other individual to its

construction or invention. That it was built at the expense of the government, however, is very probable.

Comparative economy in the use of the twin and light draft snag-boats.

SEC. 14. I shall now endeavor to show from the records and files of this office, the comparative efficiency and merits of the two classes of snag-boats, herein considered, and the relative efficiency and economy resulting from their employment in the prosecution of the snag business. With this object in view, I shall introduce a series of tabular synopses, or exhibits, compiled from official records, the import of which respectively, will be sufficiently explained and understood from the captions of the several tables.

EXHIBIT No. 1.

SEC. 15. Showing the approximate prime cost of a twin steam snag-boat, including materials, construction, equipment, and outfit complete, also the cost per month of working the same; the pay and subsistence of officers and crew; expense of fuel, deterioration, repairs, &c. &c., being included.

Prime cost of a twin steam snag-boat complete	$25,000	00
1 master commandant, at $100 per month, is	100	00
1 pilot, at $100 per month, is	100	00
1 first engineer, at $85 per month, is	85	00
1 second engineer, at $50 per month, is	50	00
1 third engineer, at $25 per month, is	25	00
1 fourth engineer and striker, at $15 per month, is	15	00
1 first mate, at $80 per month, is	80	00
1 second mate, at $35 per month, is	35	00
1 carpenter, at $50 per month, is	50	00
1 clerk and assistant pilot, at $35 per month, is	35	00
1 cook, at $22 per month, is	22	00
1 cook's mate, at $15 per month, is	15	00
1 steward, at $15 per month, is	15	00
24 laborers, $15 per month, is	360	00
2 firemen, at $15 per month, is	30	00
1 washerwoman, at $15 per month, is	15	00
Total, 40 persons. Amount per month	$1,032	00
Subsistence of 40 persons, at $6 each	240	00
Fuel per month, 225½ cords of wood	351	00
Deterioration and repairs per working month, 3 per cent. on prime cost—viz: 3 per cent. on $25,000	750	00
Total cost per working month	$2,373	00

EXHIBIT No. 2.

SEC. 16. Showing the approximate prime cost of a light-draft steam snag-boat with a single hull, including materials, construction, equip-

ments, and outfit complete. Also the cost per month of working the same, the pay and subsistence of officers and crew, expense of fuel, deterioration, repairs, &c., &c., being included.

Prime cost of a light draft steam snag-boat complete	$12,000 00
1 master commandant, at $100 per month, is	100 00
1 pilot, at $100 per month, is	100 00
1 first engineer, at $85 per month, is	85 00
1 second engineer and striker, at $50 per month, is	50 00
1 first mate, at $65 per month, is	65 00
1 carpenter, at $50 per month, is	50 00
1 clerk and assistant pilot, at $35 per month, is	35 00
1 cook, at $22 per month, is	22 00
1 assistant cook, at $12 per month, is	12 00
1 steward, at $18 per month, is	18 00
1 watchman, at $15 per month, is	15 00
14 laborers, at $15 per month, is	210 00
2 firemen, at $15 per month, is	30 00
1 washerwoman, at $12 per month, is	12 00
28 persons. Amount per month	$804 00
Subsistence of 28 persons, at $6 each	168 00
Fuel, per month, 87 cords wood	119 00
Deterioration and repairs per working month, 3 per cent. on prime cost, viz: 3 per cent. on $12,000	360 00
Total cost per working month	$1,451 00

EXHIBIT No. 3—SECTION 17.

Showing the quantity of work done in 1844, 1845, *and* 1846, *by the several twin snag-boats employed on the western rivers in those years; the duration of their service respectively; and the valuation of the work done by them, as computed from the rates reported by the chief topographical engineer in* 1845, *viz:* $6 54 *for each snag raised,* $2 50 *for each log, stump, or root removed, and* $1 *for each tree felled.—See doc. No.* 2, *H. R.*, 29*th Congress* 1*st session, pp.* 347 *and* 348.

Designation of boats, and duration of their service or working time.	Work done, and estimated value thereof.			
	Nature of obstructions removed.		Rates for removal	Value of work done.
	Designations.	*No.*		
Heliopolis, win boat, from July 29, 1844, to Feb. 15, 1845—6 months 18 days.	Snags raised and removed	2040	$6 54	$13,341 60
	Logs, stumps, & roots removed	390	2 50	975 00
	Impending trees felled	2962	1 00	2,962 00
Total value of work done				17,278 60
Average value of work per month				2,617 97
Archimedes, twin boat, from July 22, 1844, to January 8, 1845—4 months 25 days.	Snags raised and removed	1284	$6 54	$8,397 36
	Logs, stumps, & roots removed	218	2 50	545 00
	Impending trees felled	3363	1 00	3,363 00
Total value of work done				12,305 36
Average value of work per month				2,543 93
Samson, twin boat, from July 22, 1844, to April 4, 1845—8 months.	Snags raised and removed	2254	$6 54	$14,741 16
	Logs, stumps, & roots removed	573	2 50	1,432 50
	Impending trees felled	4931	1 00	4,931 00
Total value of work done				21,104 66
Average value of work per month				2,638 08
Sevier, twin boat, from July 22, 1844, to April 7, 1845—8 months 4 days.	Snags raised and removed	2694	$6 54	$17,618 76
	Logs, stumps, & roots removed	488	2 50	1,220 00
	Impending trees felled	1850	1 00	1,850 00
Total value of work done				20,688 76
Average value of work per month				2,543 70
Hercules, twin boat, from January 30, 1845, to March 21, 1846—9 months 22 days.	Snags raised and removed	3263	$6 54	$21,340 02
	Logs, stumps, & roots removed	1223	2 50	3,057 50
	Impending trees felled	7950	1 00	7,950 00
Total value of work done				32,347 52
Average value of work per month				3,323 37

EXHIBIT No. 4, Sec. 18.

Showing the quantity of work done in 1844, 1845, *and* 1846 *by the light draft or single hull steam snag-boats employed on the western rivers in those years, the duration of their service respectively, and the valuation of the work done by them, as computed from the rates reported by the Chief Topographical Engineer in* 1845, *viz:* $6 54 *for each snag raised,* $2 50 *for each log, stump, or root removed, and* $1 *for each tree felled.—See Doc. No.* 2 *H. R.,* 29 *Congress,* 1 *session, pp.* 347 *and* 348.

Designation of boats, and duration of their service or working time.	Work done, and estimated value thereof.			
	Nature of obstructions removed.	Number.	Rates for removal	Value of work done.
Gopher, light draft boat, from July 29, 1844, to March 31, 1845, eight months.	Snags raised and removed	1673	$6 54	$10,941 42
	Logs, stumps, and roots	7942	2 50	19,855 00
	Impending trees felled	1850	1 00	1,850 00
Total value of work done				32,646 42
Average value of work per month				4,080 80
Dragon, light draft boat, from December 23, 1844, to March 31, 1845, three months nine days.	Snags raised and removed	467	6 54	3,054 18
	Logs, stumps, and roots	609	2 50	1,522 50
	Impending trees felled	1017	1 00	1,017 00
Total value of work done				5,593 68
Average value of work per month				1,695 05
Gopher, light draft boat, from August 1 to March 27, 1846, seven months twenty-seven days.	Snags raised and removed	1677	6 54	10,967 58
	Logs, stumps, and roots	5855	2 50	14,637 50
	Impending trees felled	5766	1 00	5,766 00

Total value of work done				31,371 08
Average value of work per month				3,791 02
Dragon, light draft boat, from August 1 to March 27, 1846, seven months twenty-seven days.	Snags raised and removed	1228	6 54	8,031 12
	Logs, stumps, and roots	1888	2 50	4,720 00
	Impending trees felled	4527	1 00	4,527 00
Total value of work done				17,278 12
Average value of work per month				2,187 09

EXHIBIT No. 5.—Sec. 19.

Being a summary synopsis derived from the statements contained in the preceding exhibits, and showing the approximate cost and value of the work done by both classes of snag-boats, respectively. In this table a column of comparative ratios has been introduced; for the computation of which, the number 1,000 *has been employed as the moludus, or standard of comparison.*

Designation of boats.	Time employed.		Value of work done per exhibits 3 and 4.	Approximate cost per exhibits 1 and 2.	Value of work per month per exhibits 3 and 4.	Approximate cost per exhibits 1 and 2.	Comparative ratios.
TWIN SNAG-BOATS.	*Mos.*	*Days*	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*	
Heliopolis	6	18	17,278 60	15,661 80	2,617 97	2,373 00	1,103
Archimedes	4	25	12,305 36	11,469 50	2,543 93	2,373 00	1,073
Samson	8	----	21,104 66	19,184 00	2,638 08	2,373 00	1,111
Sevier	8	4	20,688 76	19,500 40	2,543 70	2,373 00	1,072
Hercules	9	22	32,347 52	23,097 20	3,323 37	2,373 00	1,400
LIGHT DRAFT SNAG-BOATS.							
Gopher	8	----	32,646 52	11,608 00	4,080 80	1,451 00	2,812
Dragon	3	9	5,593 68	4,788 30	1,695 05	1,451 00	1,168
Gopher	7	27	31,371 08	11,462 90	3,971 02	1,451 00	2,750
Dragon	7	27	17,278 12	11,462 90	2,187 09	1,451 00	1,507

Mean of comparative rates for a twin steam snag-boat 1,132
Mean of comparative ratios for a light draft or single hull steam snag-boat 2,059

N B.—The Gopher was employed on the Arkansas river, while the Dragon operated on the Mississippi and Missouri rivers.

SEC. 20. The inferences to be drawn from the foregoing exhibits are plain and obvious. Of these I shall insert a few only, which are of the following import: From exhibit No. 3 it appears that the average value of work done per month by the Hercules is considerably greater than that done by either of the other twin snag-boats. Hence it is manifest that the remark of the memorialist, on page 5 of the memorial, viz: "that the original model of these boats (viz. the Heliopolis and three other boats subsequently built) was so complete that no *improvements* have been made upon it, or *alterations* suggested up to the present time," is incorrect. For the Hercules was built in 1844 under the personal supervision of Captain Tyson, more than three years after the expiration of Captain Shreve's term of service, and differs in many respects from any snag-boat previously constructed.

SEC. 21. From exhibit No. 5, it appears that the average valuation of the work done by both of the light draft or single hull snag-boats, respectively, in comparison with its approximate cost, greatly exceeds that of the work done by the twin snag-boats, in the proportion of 1,132 to 2,059 in favor of the light draft boats; or in other terms, that an expenditure of $1,132, with the use of light draft snag-boats, has contributed to the execution of as much work as an expenditure of $2,959 has done with the use of twin snag-boats; whence it is apparent that the employment of the former, especially in ordinary cases, is far more economical than that of the latter class of snag-boats; also that the twin snag-boat is not absolutely essential to the prosecution of the snag business.

SEC. 23. Inasmuch as I am required to give an opinion of the value of the invention claimed by the memorialist, I deem it right to exhibit the best lights within my knowledge that can be brought to bear on this subject.

From page 3 of the memorial it appears that the memorialist was appointed superintendent of river improvements on the 2d of January, 1827, and was allowed a compensation of $6 per day from that time to July 3, 1832, and that from this last date to the 11th of September, 1841, he was allowed a salary of $3,000 per year; also, that the amount of his compensation is based on these allowances, made him for the entire period of his employment, was more than $39,500; which, together with the perquisites, privileges, and immunity accorded to him within the same period, has enabled him to realize an independence seldom, if ever, attained by public functionaries in the service of the United States. So liberal a compensation was never intended for a man or agent of ordinary capacity, but for one pre-eminent for his experience, knowledge, and judgment in relation to river operations, as also to all business transactions connected therewith; and it was reasonable to presume and expect that during the period of his agency his best efforts and talents in all respects were due, and ought to have been devoted, to the business of his appointment in all its bearings and relations, without any claim or title to extra compensation. The snag-boat, with all its modifications, embraces no improvements in any of its parts, appendages, or appliances, that the nature of the service would not be likely to suggest to any person properly qualified to fill the station of superintendent. Nor does the invention seem to call for any remuneration beyond the liberal allowances already bestowed, in the shape of salaries, perquisites, &c., which have been amply sufficient to command the services of a superintendent every way qualified for the business.

It should, moreover, be observed, that the memorialist, agreeably to his own showing, was in receipt of his salary ($3,000 a year) up to the 11th of September, 1841, whereas the prosecution of the snag business was suspended at least if not more than a year prior to that date, for want of appropriations. Within the year 1841, it is pretty evident that the public services rendered by the memorialist, in addition to the safe-keeping of the snag-boats Heliopolis, Archimedes, and Eradicator, then lying in ordinary near his residence, for which a compensation of $1 per day is supposed to have been allowed, con-

sisted merely in the direction and occasional supervsion bestowed by him for a short time only, on the repairs of the boat last mentioned.

SEC. 24. The memorialist on page 5 of the memorial seems to regard the service he has performed in removing the raft of Red river in the light of *extra duty*, and virtually raises a claim to extra allowances on this account. In view of this argument, however, it is proper to remark that the salaries awarded and paid to him ought to be regarded as a full remuneration for all the time, attention, ingenuity, energy, industry, &c., within the scope of his abilities, and in his power to bestow; and that however multifarious the duties of his agency, they did not subject him to any extra pecuniary outlays, nor did they embrace a wider range than the case seemed clearly to authorize and justify.

SEC. 25. But apart from the considerations suggested as above, and regarding the invention in an abstract point of view, or in the light of being divested of all patronage derived through or from official station, and involving merely and exclusively individual enterprise, labor, and expense, I do not hesitate to give the opinion, that the intrinsic merits and worth of the invention, in so far as relates to the introduction and use of the snag-beam, (which I regard as the only patentable improvement or principle in the twin snag-boat,) may be fairly estimated at a value not exceeding ($500) five hundred dollars, for every boat to which this appendage has been or may hereafter be attached. Accordingly the number of twin snag-boats embracing this improvement and already constructed, being eight, viz: two called Heliopolis, two called Archimedes, one H. M. Shreve, one Samson, one Sevier, and one Hercules, at $500 for each boat, ($4,000) four thousand dollars, which in this view of the case, ought to be regarded as a just, full, and liberal remuneration for the invention up to the present date.

I have the honor to be, sir, very respectfully, your most obedient servant,

S. H. LONG,
Lieut. Col. Top Eng'rs, Supt. W. R. Improvments.

Col. J. J. ABERT,
Chief Top. Eng'rs, Washington, D. C.

BUREAU TOPOGRAPHICAL ENGINEERS,
December 11, 1857.

I certify that the foregoing is a true copy of the original on file in this office.

J. C. WOODRUFF,
Capt. Top. Eng'rs, Asst. in Bureau.

5.

Depositions, and other documents marked (1 C.) to (10 C.) with H. M. Shreve's original patent for his snag-boat filed by the claimants.

1 C.

STATE OF MISSOURI, *County of St. Louis, ss.*

I, Samuel Treat, of the county of St. Louis and State of Missouri, being duly sworn, depose and say, that in the year eighteen hundred and forty-five I was assistant editor of the Missouri Reporter, a newspaper published at that time in the city of St. Louis, in said county and State; that the letters of Col. H. S. Long and others, published in said paper of April 2d, 1845, were correct copies of the originals then in my possession; that I was accustomed at said time to read the proofs of all such matters published in said paper, and said letters as published in said paper on said second day of April, were true and accurate copies of said originals; that all original papers of the description of the said letters which were not destroyed or returned to the person to whom they belonged, passed into my possession and custody; that I have made diligent search for said original letters in the place where they are likely to be if preserved as part of such papers belonging to the said Reporter office, and have been unable to find the same, or to learn what has become of the same; that, if said original letters were not returned to Capt. Henry M. Shreve thereafter, they have been lost or mislaid, and that I have no recollection whether the same were ever returned to said Shreve or not.

SAMUEL TREAT.

Sworn to and subscribed before me the undersigned clerk of the St. Louis court of common pleas within and for the county of St. Louis, State of Missouri, this fifth day of November, one thousand eight hundred and fifty-six.

In testimony whereof, I hereto set my hand and affix the seal of said [L. S.] court at the office in the city of St. Louis, the day and year above written.

CHARLES W. HICKS, *Clerk.*

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2 C.

STATE OF MISSOURI, *ss.*

Walker R. Carter, executor of Henry M. Shreve's estate, on his oath states that he has made diligent search among the papers of the said Henry M. Shreve, for certain letters written to said Henry M. by Col. S. H. Long, and which are particularly referred to in an affidavit made by Judge Samuel Treat on the 5th day of November, 1856, as having been published in the Missouri Reporter on the 2d day of April, 1845, and that he has been unable to find the same.

WALTER R. CARTER.

Sworn to and subscribed before me this 6th day of January, A. D. 1856, as witness my hand and official seal at my office in the [L. S.] city of St. Louis, Missouri.

CHARLES H. TILLSON,
Commissioner of the Court of Claims for the city of St. Louis, Missouri.

3 C.

Shreve's letter to Engineer Department, January 13, 1839: Reports why it is necessary to build additional boats for improvement of western waters, and presents a detailed estimate of cost, *exclusive of his patent right*, which he expects to sell to the government, &c.

Letter 7th June, 1839: Forwards monthly report of work in the Arkansas river, &c., by the Archimedes; 23,241 trees felled from caving banks, 16,952 logs cut off that had fallen under the banks, 2,761 snags removed from channel, 9,404 trees felled and 1,409 snags removed, producing an aggregate of 32,645 trees felled, and 17,103 logs cut from under the banks, and 2,170 snags removed from the bed of the river, &c.

Letter February 14, 1839: Explaining the nature of his claim to a patent for the invention of the snag-boat used on the western waters.

December 23, 1839—No. 908: Suggests that an application be made to Congress for compensation to him for the use of his patent snag-boat, and claims it as having been vested in him by acts of Congress, and unquestionably belonged to him as the inventor of that important and valuable machine, of which the United States have had the exclusive benefit for ten years.

LOUISVILLE, *December* 23, 1839.

"Statement showing the aggregate number of years the United States has had the use of my patent steam snag-boat improving the navigation of the Ohio, Mississippi, Arkansas, Red, and Missouri rivers

The Heliopolis built in 1829	10 years.
The Archimedes built in 1831	8 years.
The Eradicator built in 1836	3 years.
The H. M. Shreve built in 1836	3 years.
	24 years.

"I hold the patent for these boats up to the 12th of September, 1852. If an average of four boats are worked up to that date, it will be fifty-two years added to the twenty-four already worked, making in all seventy-six years. The question is, what is the patent worth, and how is it to be paid, which is respectfully submitted to Congress.

"HENRY M. SHREVE, *Superintendent.*"

October 31, 1840: "I must beg leave respectfully to call the attention of the department to my claim for the invention of the snag-boat, which has been patented to me on the 12th of September, 1838, investing in me the exclusive privilege of the use of that invention, which is sanctioned by the Constitution and conformable to the laws of Congress. I therefore see no reason why I should not be paid a fair compensation for the use of that machine by the government. I therefore hope that some provision will be made at the approaching session of Congress to do me justice, which is all I ask.

"HENRY M. SHREVE."

To Secretary of Wa2r, December 1, 1841: Complains of having been removed from the service of government, and says: "My case is a peculiar one. I have been an agent under the Engineer department some fourteen years, superintending the improvement of the navigation of the western rivers. The snag-boats which have been used to execute that important work are of my own invention, and patented by me. The United States has had the use of them since August, 1829. They have been eminently successful in all the various works executed by them, and I have not been allowed one dollar for the use of the patent."

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4. C.

THE UNITED STATES OF AMERICA,

To all to whom these letters patent shall come:

Whereas Henry M. Shreve, of St. Louis, Missouri, has alleged that he has invented a new and improved machine for removing snags and sawyers from the beds of the rivers, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said Henry M. Shreve, his heirs, administrators, or assigns, for the term of fourteen years, from the twelfth day of September, one thousand eight hundred and thirty-eight, the full and exclusive right and liberty of making or constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Henry M. Shreve, in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, [L. S.] and the seal of the Patent Office has been hereto affixed.

Given under my hand, at the city of Washington, this twelfth day of September, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-third.

JOHN FORSYTH,
Secretary of State.

HENRY L. ELLSWORTH,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

Be it known that I, Henry M. Shreve, of the city and county of St. Louis, and State of Missouri, have invented a new and useful machine for removing trees, roots, logs, &c., (called snags and sawyers,) from the beds and channels of rivers, which may be called the "*Archimedes*" or "*Steam Snag-Boat*," described as follows, reference being had to the annexed drawings of the same, making part of this specification:

It is no doubt well known, that great difficulties have existed in the navigation of the Mississippi river, and other rivers of the west, arising from numerous snags, sawyers, and other impediments found in the tracks of steam and flatboats throughout the whole length of the former river, and so numerous were those obstructions that no pilot could bear in mind their location. To perform a great public good in removing these obstructions from our rivers, the subscriber has invented and constructed a very simple machine, that will accomplish this most desirable object with the greatest despatch, and at least expense, and has at length succeeded beyond the most sanguine expectation. The machine is beautifully simple, and most powerful in its operation, and produces the effect intended in the most admirable manner. It consists of a double or twin boat A, figs. 1, 2, 3, connected by two tier of beams, the upper tier running from the midships or centres of the boats to the stern of the same, decked over on the tops of the upper beam. The lower tier running from midships toward the stern, about half the distance of the upper tier, and sealed, sheathed, or planked, under said lower tier of beams, and secured by diagonal timbers, *t*, fig. 4, running on the top of the lower tier of beams, framed on to each beam, and secured by a bolt passing through the beam. The front or forward end of the two sets of beams are connected by a strong bulkhead C, fig. 1, fixed in an inclined position, and sheathed with sheet iron, about one-fourth of an inch thick; the lower side of the bulkhead being thirty inches forward of the upper side, forming an inclined plane, by which the end of a snag is conducted on deck by the impetus of the boat, when the snag comes in contact with said bulkhead. There is also a large beam, D, figs. 1, 2, and 6, passed through the sides of the two hulls near their bows, running quite through the hulls of the boat to their outside frames; this beam is made of square timber, fitted and bolted together, to form a mass of timber, nine feet fore and aft, and two and a half feet thick, rounded on the front side to a semicircle, or nearly so, and sheathed with sheet iron, about one-fourth of an inch thick. There is a fore and aft framing of timber, E, figs. 1, 2, and 7, running from the middle of the boats to the stern, raised seven feet above the deck, and supported by perpendicular stanchions, W, fig. 7, and diagonal braces, *x*, which also support cradle pieces, *y*, to conduct the snags down on to rollers, F. As they are drawn on deck, the rollers being placed in a line, near the deck, from the forward end of the middle deck to the stern. The main windlass, G, figs 1, 2, 3, and 5, of the machine, is placed about two feet forward of the bulkhead C, at the middle of the boats,

resting on a diagonal framing, H, figs. 1, 2, and 3, called "*gallows frames,*" twenty feet above the water, more or less, as may be found convenient. The main windlass consists of a castiron shaft, G, sixteen inches diameter in the centre, and ten inches at the ends and journals. On each end of the windlass, there is a wheel, I, figs. 1, 2, 3, and 5, eighteen feet diameter, with a score, groove, or recess on periphery of the rim, of six inches wide and four inches deep; in and round which a five and an half inch line, J, figs. 1, 3, and 5, is passed, and leads down through blocks and sheaves to the windlass L L, fig. 1, on the coupling shaft M, of the engine, which windlasses are four feet long and sixteen inches diameter. By these lines thus working on the windlasses, a perpetual and prodigious lever power is obtained. From the main windlass G, there is a chain N, suspended, made of malleable iron, two inches thick, with links as short as they can be made, and at the same time allow them to work clear of each other. One end of this chain (which is sixty-five feet long, or any other suitable length or size) is fastened on the windlass G, and wound around the same to any extent required; the other end of the chain hangs in a loop, O, figs. 1, 3, and 5, or running noose, down to the surface of the water, or below it if required. In that end of the chain, there is a shackle, or large ring, P, figs. 3 and 5, made of iron, three inches diameter, or so large as to let the chain reave through it freely, by which the running noose on the chain is made. To the shackle there is attached a tackle Q, which leads to a cross beam, R, of the gollows frame above, by which the running noose in the end of the chain is controlled. A leading block and sheave is attached to the shackle, through which a line, S, is passed, one end of which is fastened to the bows larboard boat, A, the other end passes through a leading block, T, on the bows of the starboard boat, A, and leads aft to the windlass, V, on the main shaft of the engine; by that line the chain is drawn out and passed down on the snag, to any distance required. There is also a line, V, passing around chocks W, on the arms of the larboard purchase wheel, and leading down to the windlass V, on the larboard main shaft of the engine. The use of this line is to reverse the motion of the purchase wheel for the purpose of lowering the chain down to renew the purchase on the snag at pleasure. The whole of the machine is worked by the power of a double steam-engine XX, coupled by the permanent shaft M, extending from the crank *y*, of one engine to the crank of the other. The *operation* of the machine is as follows: When snags, or trees are found so firmly fixed in the bottom or bed of the river as to be liable to break before the roots give way, they are removed by running against them with the twin boat, so as to strike the snag with the large beam D, in front, which, in nearly every case, breaks the snag off below the bottom of the river, as far as the diameter of the tree. When the snag is not so firmly fixed as to break, the beam runs under it and turns it over in a position contrary to that in which it was first found, and so far as to allow the boat to pass entirely over it, by which means the tree is so loosened from the mud or sand in which it is imbedded, as to be taken up by the main windlass G, in the manner before described, and laid horizontally on the rollers F, on the after deck, when the root is cut off with a cross-cut,

or other saw, by hand, or the steam power, and the root deposited in the bends of the river, where the water is from fifteen to twenty feet deeper than it is over the bars; consequently the root sinks many feet below the draft of water that any boat can carry over the bars. The trunk of the tree is cut into several lenghths of from twenty to thirty feet, and thrown overboard, when they are carried down by the stream, and are caught for fire wood, or pass off to the sea. The entire operation of removing a snag, required on an average about forty-five minutes; or sixteen snags per day, with a machine that this applicant has recently been experimenting with, on the Mississippi river. A greater number, however, may be removed in a day.

For a further illustration of this invention, reference may be had to the annexed drawings, figs. 2, 3, 4, 5, 6, and 7. Fig. 1, is a top view; fig. 2 is a side view; fig. 3 in as end view; fig. 4 is a plan of the lower tier of beams B, showing the diagonal braces t; fig. 6, is a cross-section of the snag-beam; fig. 5, section showing the manner of drawing up a snag or tree; fig. 7, cross section of the framing E, or cradle with the rollers F, on which the snag or tree is laid after being hauled up. The boat being put in motion by the full power of the engines, (say of 120-horse power, or more,) is directed in such a manner as to receive the end of the snag on *top* of the *snag-beam* D, fig. 2, when, by the great momentum of the whole moving mass, together with the continued action of the engine, the snag is either broken off at (*d*) or (*b*), fig. 2, or is loosened from its bed and thrown in the position (*c*, fig. 2,) represented by dotted lines, in which case it becomes necessary to raise it on deck; to accomplish which, it is brought *under* the snag-beam, and between the two boats in the space *m*, *n*, *o*, *p*, fig. 1, when the chain N, from the windlass G, fig. 1, is passed around it. The windlass, as before stated, is worked by the fall or rope J, passing through a leading block to a barrel L, of sixteen inches diameter, fixed on the coupling shaft M, of the engine, as before stated. When the log or tree is raised so as to meet the shaft of the windlass, it is secured for a moment to a bolster, by a chain on deck. When the windlass is overhauled by the down-haul V, which is also worked by a barrel, U, on the main shaft. At the same time, the chain as it slacks is hauled out in the position represented in fig. 5, by a line, S, attached to a ring O, passing forward to a leading block *p*, and then back to a barrel, U, fig. 1, on the main shaft of the engine. As the log or snag rises and becomes counterpoised, it falls back on the rollers F, fig. 1, between the strong timber frames E, on each side of the rollers, which thus form a cradle, secures other parts of the boat from injury. When in this position the root is cut off, and the trunk cut up and launched into the river by means of tackle purchase; the root falls through the space *m*, *n*, *o*, *p*, and the trunk is launched over the inclined plane L, at the stern. The falls of both these purchases are led to the main shaft of the engine.

The power of this simple piece of machanism is such as to raise the largest and most firmly planted snag in the river A snag of 1,600 cubic feet of timber, (after separating the root,) weighing not less than sixty tons, has been raised by the experimenting machine referred to. The machine, however, is capable of raising a weight of

more than two hundred tons. And the part that is the most liable to give way, is the chain. The machine has raised a tree 160 feet in length, and 3½ feet in diameter, and several that were planted twenty feet in the bed of the river, have been raised.

The invention claimed, and desired to be secured by letters patent, consists in the manner in which I have combined and connected the mechanical power of the windlass and the pulley, so as to co-operate with the momentum given to a twin steamboat, and with the continuous action of the paddle wheels, so as to break off, uproot, and raise snags and sawyers, as above set forth. I, however, particularly claim as new, the application of the forward or snag-beam D, for the purpose of raising, or breaking the snag, or sawyer, preparatory to its being lifted on board the boat, by the apparatus constructed for that purpose. I also claim the manner of connecting together the two boats by means of the upper and lower tier of beams, diagonal braces, bulkhead, and forward beam D.

HENRY M. SHREVE.

WM. P. ELLIOT,
JOHN H. HUNT,
Witnesses.

[For drawings, see original.]

No. 5 C.—Map of Lousiana—see original.
No. 6 C.—Design of snag-boat—see original.

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7 C.

A description of a model of a boat to cut sawyers, planters, and snags in the Ohio and Mississippi rivers: the two bottom planks are two flat-boats connected by good timber and decked over; the parts marked thus (4) are to be of cast iron; those marked (6) tackle-blocks are to be suspended to the figures (7) are windlasses or capstans to work the tackle-blocks; the circular saw shaft is to be worked similarly to the horizontal saw shaft, that is, with the same cast iron wheels; the inclined shaft is either to be worked by a cast iron wheel, or by a crank as an actual experiment. I deem necessary to a decision cast iron is to be attached to the inclined post at (5) through which the inclined shaft works.

JOHN BRUCE.

9 C.

List showing the quantity of land disposed of by the United States in the Natchitoches (Louisiana) district, within the years mentioned, in the townships specified.

Date.	Township 14, range 9.	Township 14, range 10.	Township 15, range 10.	Township 16, range 10.	Township 14, range 11.	Township 15, range 11.	Township 16, range 11.	Township 17, range 11.	Township 14, range 12.	Township 15, range 12.	Township 16, range 12.	Township 17, range 12.	Township 18, range 12.	Township 19, range 12.	Township 16, range 13.	Township 17, range 13.
	Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
1830																
1831																
1832																
1833																
1834																
1835						894.12				943 77						
1836	5,667.17				475.55	677.02				1,099.44						
1837	1,495.38															
1838					159.00					70.54						
18 9	567.94				5,146.77	338.84			790.13	2,333.13				110.83		
1840						2,464.19			250 54	395.58	3,375.16		40.02	38.32	780.32	5,630.40
1841					1,277.39											76.98
1842									1,268.83	677.02						
1843		441.82			679.85		1,361.08	2,155.42		677.02	126.00					
1844			79.23	138.48	631.34		1,501.31	3,799.09			155.06	686.20	767.73			
1845				159.25			390.23	79.89				1,417.39	535.51			
1846					135.56			119.64				80 00	249.24			
1847				107.34	39.84			237.98				47.00	263.73	190.18		
1848		109.80			895.31		1,192.27	758.56			47.47	392.34	2,569.35	130.15	1,586.42	
1849	39.77	358.01	569.59	2,323.63	40.00	79.62	334.48	200.62	1,259.72				232.92	2,209.07	968.12	75 60
1850	121.64	193.97	2,094.39	2,682.66		159.94	1,586.06	1,218.52	397.01	76.44		80.00	734.15	200.00	406.73	
1851	761.33	2,076.54	1,710.09	1,935.86		319.25	1,077.62	513.61	397.01	477.15		39.85	468.37	446.29	425.50	
1859	441.02	49.59	199.61	68.96	39.96		496.11	669.45		477.93			709.63	261.94	195.08	

C 9—Continued.

Date.	Township 18, range 13.	Township 19, range 13.	Township 20, range 13.	Township 21, range 13.	Township 22, range 13.	Township 17, range 14.	Township 18, range 14.	Township 19, range 14.	Township 20, range 14.	Township 21, range 14.	Township 22, range 14.	Township 19, range 15.	Township 20, range 15.	Township 21, range 15.	Township 22, range 15.	Totals.
	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.
1830																
1831																
1832																
1833																
1834																
1835																1,767.89
1836																7,910.16
1837																1,495 38
1838																992.54
1839	4,469.21	8,727.78	1,839.12		6,006.18	13,382.44		3,908.86	6,995 91	9,798.73	7,910.96			5,419.61		76,998.44
1840	127.50	80.25	219.53		3,216.44		462.53	480.0	2,274.24	639.21	920.79	1,132.46	187 00	727.85	3,274.62	26,646.95
1841	80.00				1,039.58	79.90		62.56	80.00	400.88	400.20					3,497.49
1842		561.75	80.30		161.31					89.36	240.00					3,078.57
1843						54.54		241.26		80.14	88.43			690.31		6,595.87
1844	27.50	80.25	439.80		159.30		36.12	319.50				568.94				9,391.79
1845		80.25	320.09			40 00		240.00	642.76	80.14		483.12		159.59		4,558.92
1846	200.00	80.00			160.79	131.70	132 50			160.26						1,449.89
1847	40.05	920.68	240.24		760.34	529.96	485.72	240.07	401.50	240.63		2,957.34				7,631.90
1848	280.05	440.00	280.39		238.94	2,862.26	1,198.72	653.08	40.00	640.94		4,283.80		319.87	160.50	18,923.92
1849	80.00	160.03	720.33		1,250.52	1,999.10	870.53	787.32	329.22	600.87	161.16	1,280.59		819.07	839.25	20,591.77
1850	160.21		801.28		244.23	428.45	286.18			840.97	80.00	359.38		1,541.93	439.84	15,131.29
1851	721.26	360.30	1,120.47		200.86		115.90		80.00	1,271.22		438.95	223.58	160.02	40.12	15,379.45
1852		440.31	1,202.99	880.42	459.45	140.00	346.52			775.20	160.00	40.00	54.68	289.69	400.95	8,702.83
Aggregate																289,901.40

10 C.

GENERAL LAND OFFICE, *January* 16, 1856.

SIR: I have the honor to acknowledge the receipt of your note of the 6th inst., accompanied by a diagram embracing certain townships situate in the northwestern or Natchitoches land district of Louisiana, within the limits of which the "Grand raft of Red river" was situated, and in compliance with your request, herewith enclose you a tabular statement exhibiting the number of acres of land lying within the limits of said townships, which have been sold by the United States in each year, from the 1st of January, 1830, to the 31st December, 1852, inclusive.

I am, sir, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

F. W. RISQUE, Esq., *Present.*

OFFICE OF THE COMMISSIONER OF THE COURT OF CLAIMS,
Louisville, Ky., March 19, 1856.

Deposition to be used in the case of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, deceased, against the United States, now pending in the Court of Claims. The parties having met by agreement.

Witness called by attorneys for the plaintiff, Kinkead & Barr, after being duly sworn, testified as follows:

My name is John Shallcross; I am fifty-six years of age; my past occupation has been that of steamboating; I am now inspector of steamboats; I live in Louisville, Kentucky; I have lived in this place during the year last past, and have resided in the same place for nearly forty years; I have no interest in the claim which is the subject of inquiry, directly or indirectly; I am in no way related to the claimants, or either of them.

Interrogatory by attorney for the claimants.

Question 1. Were you or not acquainted with the late Captain H. M. Shreve, of St. Louis? Did he or not hold an office under the United States? If so, what office, and how long did he hold the same?

Answer. I did know Captain Henry M. Shreve many years; he held an office under the United States for several years, I cannot say how many; the office was that of superintendent for the improvement of the western rivers; removing snags and other obstructions from said rivers.

Question 2. Who was the inventor, or claimed to be the inventor, of the steam snag-boat?

Answer. Captain Henry M. Shreve was the inventor. I never heard any other claim to be the inventor.

Question 3. What appliances or apparatus was used for removing obstructions from the beds of western rivers prior to August, 1829, and what subsequent to that date?

Answer I don't remember what means were used to remove obstructions prior to 1829, nor do I know of any special apparatus until the snag-boats invented by Captain Shreve were put into operation. After these boats were invented they were used, and they only, in the beds of rivers covered by water.

Question 4. What number of steam snag-boats have been built by the United States and used by them?

Answer. I know that many have been built and used by the United States, but cannot state the number.

Question 5. Were all of the said boats identical or similar in principle?

Answer. They were all similar in construction and principle, except one or two single hulled boats; they were different from the others only in being of single hull; they would not have answered so well all the purposes that the double hulled boats answered.

Question 6. What was the navigable condition of the Mississippi, Ohio, Arkansas, Missouri, Cumberland, and Red rivers about the month of August, 1829, and for several years prior thereto; and what about the month of September, 1841?

Answer. About the Missouri and Arkansas I know nothing; the Mississippi, in August, 1829, and prior to that time, was very much encumbered with snags; the Ohio river was less encumbered by snags than the Mississippi, but both rivers were greatly improved by the use of the snag-boats in removing snags and other obstructions; at or about September, 1841, great improvement had been made in the rivers I have referred to as having personal knowledge of.

Question 7. Were or not said boats used for removing obstructions from the aforesaid rivers; and was there or not any other made, then or now known, by which the said obstructions could have been removed with equal or as great facility?

Answer. These boats were used in removing obstructions in the Mississippi and Ohio rivers, and boats of similar construction have been used up to the present time for the same purpose; I know of no other means of removing snags or other obstructions with the same facility.

Question 8. What effect had the use of said boats upon the navigation of said rivers?

Answer. The snags and obstructions removed by them added much to the improvement of the navigation.

Question 9. If Shreve's plan and means for removing obstructions had not been adopted by the government, how long would it have taken and how much would it have cost to have accomplished the results you have spoken of?

Answer. If Mr. Shreve's plan, or some other plan of removing obstructions in these rivers by steam power had not been adopted, it would have taken a long time and an immense outlay of money to accomplish the same amount of work.

Question 10. State the situation and dimensions of some of the

largest snags, and the time required by one of these snag-boats to remove them.

Answer. Some of the largest snags are from three to four feet in diameter; I could not say the length of time it required to remove such by a snag-boat, but the removal was accomplished with facility.

Question 11. Did or not the said Shreve abandon, or intend to abandon, the use of the said invention to the United States without just compensation therefor; and did he or did he not, prior and subsequent to leaving the service of the United States, protest against the use of the said invention by the United States, unless adequate compensation was paid therefor?

Answer. Captain Shreve told me before he left the service, I think it was, that he intended to claim compensation for the use of his invention of the snag-boat from the United States.

Question 12. What, in your judgment, is the value of the invention?

Answer. I consider the invention valuable, but I cannot fix any amount.

Question 13. How long were you engaged in steamboat navigation on the western waters?

Answer. I was engaged in steamboat navigation nearly thirty-five years on the western waters.

Question 14. Do you know of any other matters relative to said claim?

Answer. I do not.

Adjourned till to-morrow, March 20, at three o'clock p. m.

OFFICE OF COMMISSIONER OF THE COURT OF CLAIMS,
March 20.

The witness not being present, the case was adjourned, to meet by agreement of the parties. June 9 parties met by agreement.

Interrogatories by the attorney for the United States, E. S. Worthington, esq.

Question 1. In what respect did the snag-boats of Captain Shreve differ from the machine boats previously employed by Bruce in removing snags, &c., from the Ohio river?

Answer. I have not at this time any recollection of the boats used by Bruce, as referred to.

Question 2. What parts of the machinery used in the snag-boats do you ascribe to the invention of Captain Shreve? What are the uses of those parts, and what are your means of knowledge that he was the inventor?

Answer. The principal value of the machine was what was called the "butting-beam," which was a large mass of timber very strongly secured near the bows of the boats, and extending from one boat to the other of the double hulled boats. The uses of this "butting-beam" were by entering under the snag to break it loose from the bottom by the power of the engines of the boat. The other portions of the machinery of the boat used for removing snags and other obstructions, were powerful purchases which I believe were not the in-

vention of Captain Shreve, but were valuable in their combination of the whole structure of the boat to accomplish the purpose. As to my means of knowledge that he was the inventor of the snag boat with all its combinations is, that I was intimately acquainted with Captain Shreve; I frequently conversed with him on the subject of the snag-boats, at the time of the building of the first steam snag-boats. He, the said Shreve, contracted for and superintended the construction of said snag-boats, and in our conversation always claimed to be the inventor, and I have never heard of any other persons claiming to be the inventor, which I should have heard if any others had made such a claim, most probably.

Question 3. Was the butting-beam you have spoken of devised or contrived by Captain Shreve alone, or was it introduced while he was superintendent, upon consultation with any other person whatsoever?

Answer. The butting-beam was introduced while Captain Shreve was superintendent, and I believe him to have been the inventor of the said butting-beam, and I have no knowledge of any person or persons rivalling him in that contrivance, or that of any other part of the machinery of the boat.

Question 4. Was not the Hercules the only steam snag-boat constructed by the United States since Shreve was removed?

Answer. I cannot say positively; my impression is there was more than one built after the removal of Captain Shreve, of the kind of boats described.

Question 5. Was not the plan employed after Shreve was dismissed, different from that adopted by Shreve in the construction of the Heliopolis, and was there a boat constructed on his plan after he was removed?

Answer. I am satisfied there were boats, or a boat, constructed similar to the boats constructed by Captain Shreve while he was superintendent, after the said Shreve was dismissed; and also a boat or boats of a different construction, being of a single hull and of light draft, intended to work in shallow water.

Question 6. Are you aware what were the actual and material differences between the two sets of boats—those constructed before and those after Shreve was dismissed?

Answer. I am not aware of any material difference in the twin or double hulled boats; the single hulled boats were different; I don't think Captain Shreve had any single hulled boats.

Question 7. Which is the more effectual and economical machine, the twin hulled snag-boat, or the single hulled boat, introduced since Shreve was removed?

Answer. For all general purposes, I am satisfied that the twin or double hulled boat would be the most effective, and therefore the most economical.

Question 8. Do you give this as your opinion, or have you any knowledge on the subject?

Answer. I give it as my opinion, based upon a knowledge of the obstructions to be removed, and from a general knowledge of the machinery necessary for the removal of such obstructions, and from my long experience in navigating the waters in which those obstructions

exist. I have never been engaged in removing snags, but I have a good deal of knowledge of machinery.

Question 9. Is not the single hulled boat a different machine from the Heliopolis?

Answer. The single hulled boat was of different construction from the Heliopolis.

Question 10. Was not the project of applying steam in combination with windlasses, pulleys, or levers and twin boats to removing snags, suggested by John Bruce and Captain Delafield, before it was adopted on the recommendation of Shreve in the construction of the Heliopolis?

Answer. I know nothing of the facts referred to in the interrogatory.

Question 11. Are not the improvements made in the construction of the Heliopolis, in the construction of the Hercules as important as the introduction of the buttin-gbeam into the twin steamer?

Answer. I consider that I have answered that in stating that I was not aware of any material difference in the construction of the boats built before and after Captain Shreve was dismissed, and in what I have previously said of the butting-beam. I am not aware of any material difference in the construction of the two boats referred to; I speak of the Heliopolis, under the impression that she was a twin boat.

Question 12. Is not the application of steam to the raising of snags and logs and for propelling the boat, the great principle to which the success of the business referred to is due?

Answer. Without the application of steam to the boats referred to, they would certainly not be as effective.

Question 13. Are not the particular sets of pulleys, beams, &c., by which this power is made available for its purpose, such as might have been expected from any qualified superintendent, and such as ought to have been required from any one who was receiving three thousand dollars per annum?

Answer. I think it would have been difficult to have found any general superintendent that might have been employed for the purposes stated, having the ingenuity and energy of Henry M. Shreve.

Question 14. What business was Captain Shreve engaged in, and what means was he possessed of when he came into the employment of the government, and did not the position, salary, perquisites and privileges of his office enable him to acquire a large estate, of which he died possessed?

Answer. Captain Shreve was engaged prior to his being employed by the government, for the purposes stated, in the business of steamboating; my impression is he was not in possession of much money when he entered the employment of the government. Captain Shreve did acquire a considerable fortune, but whether his salary, perquisites, &c., were the means of his acquiring his fortune, or how much they aided him, I do not know.

Question 15. Do you know of Captain Shreve's having expended any money of his own in making experiments connected with snagboats?

Answer. He may have done so, but I have no positive knowledge of his doing so.

Question 16. Did Captain Shreve ever name to you, or in your presence, a sum that he intended to demand of the government for the invention he claimed?

Answer. As well as I can now recollect, Captain Shreve did state to me that he intended to ask from the government to be paid for the invention of his snag-boat; and I think the amount he stated was thirty thousand dollars; but of that I am not positive. This conversation, I think, occurred whilst he was in the employment of the government. My recollection of this is vague; it has been so long ago.

Question 17. Do you know of any other matter relative to the claim in question?

Answer. I do not.

JOHN SHALLCROSS.

STATE OF KENTUCKY, *Jefferson County:*

On the 20th of March and the 9th of June, eighteen hundred and fifty-six, personally came before me the witness within named, and after having first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who subscribed the deposition in the presence of the commissioner.

The deposition of John Shallcross, taken at the request of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, dec'd, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, deceased. The adverse party was notified, did attend, and did not object.

JOHN H. HARNEY,
Commissioner.

Com's fee, $7 80.

OFFICE OF THE COMMISSIONER OF THE COURT OF CLAIMS,
Louisville, Ky., August 1, 1856.

Deposition to be used in the case of Walker R. Carter and Lydia B. Shreve, widow of Henry M. Shreve, decd., in a case now pending in the Court of Claims.

Witness called by attorneys for the claimants, Kinkead and Barr, and being duly sworn, testifies as follows;

My name is J. S. Moorhead; I am steamboat agent; I have resided in Louisville during the year last past; I am forty-six years of age; I have no interest in the claim in question; Mrs. Shreve, one of the claimants, is my aunt by marriage.

Question 1. Were you acquainted with the late Captain Henry M.

Shreve, and if so, did he hold an office under the United States, and what office, and how long did he hold the same?

Answer. I was well acquainted with Captain Shreve; he held an office under the government of the United States as superintendent of the public works on the Ohio, Mississippi, Arkansas, and Red rivers; he held the office from ten to twelve years.

Question 2. Who was the inventor, or claimed to be the inventor, of the steam snag-boat?

Answer. Captain Henry M. Shreve was the inventor. I was with him most of the time he was making his drawings, and he told me his plans as long as two years previous to the construction of the first snag-boats which he superintended.

Question 3. What appliances or apparatus were used for removing obstacles from the beds of western rivers prior to August, 1829, and what subsequent thereto?

Answer. Prior to August, 1829, there was a machine invented and used by Bruce, under a contract with the government. It was twin boats with lever purchase. They failed; I witnessed their experiments several times, which were entirely unsuccessful. After that, the boats invented by Captain Shreve were used for one year; they were called twin hand-boats, worked by hand. The power was obtained by many purchase wheels on a shaft suspended by a gallows frame, and continuing from one boat to the other, by which any loose snag could be raised, not weighing over forty tons. Afterward Captain Shreve built the steam snag-boat Heliopolis, which was successfully worked for a number of years, with others of similar construction.

Question 4. What number of steam snag-boats have been built for and used by the United States?

Answer. Some twelve or fourteen; I can't tell exactly.

Question 5. Were all of the said boats identical or similar in principle?

Answer. They were, with one exception; it was a single hulled boat, with a hoisting power similar to the double boats, only placed on the bows instead of the midships as on the double hulled boats.

Question 6. What was the navigable condition of the Missippi, Arkansas, Missouri, Ohio, Cumberland, and Red rivers about the month of August, 1829, and for several years prior thereto, and what about the month of September, 1841?

Answer. All but the Cumberland were dangerous streams to navigate, on account of snags, stumps, and logs. In the year 1829, and for years before, I knew nothing about the Cumberland river. In the year 1841 these rivers were comparatively clear of these obstructions, so much so that steamboats could run at night as well as in daytime, which it was impossible to do previous to the construction of snag-boats; and at this period there were very few losses of steamboats, or of any other kind of boats, or rafts on these rivers.

Question 7. Were said boats used for removing obstacles from the rivers aforesaid, or were they not; and was there, or was there not, any other mode, then or now known, by which the said obstacles could have been removed with greater or equal facility?

Answer. They were used for removing the obstructions above mentioned. There was not then, nor is there now, any other mode of removing these obstructions known, and I do not believe there ever will be any mode of removing them with equal or greater facility.

Question 8. What effect had the use of said boats upon the navigation of said rivers?

Answer. They produced the improvement I have mentioned above. The time of trips from one port to another was shortened at least one-third.

Question 9. If the old plan of removing obstacles had been adhered to, how long would it have taken, and how much would it have cost, to have produced the same results?

Answer. It could not have been done by the old plan with all the money in the United States treasury.

Question 10. State the situation and dimensions of some of the largest snags, and the time required to remove them by the use of a steam snag-boat?

Answer. In the commencement of the use of the snag-boats, the most dangerous and numerous were stationary snags, standing upright and heading in all directions, and were imbedded from ten to fifty feet; they were from one to twelve feet in diameter; the most of which were removed at one stroke of the butting-beam, by being always broken off below the bed of the river ten or twelve feet. I have seen as many as one hundred and forty of these removed in a day.

Question 11. Was any effort made to remove the Red river raft by the use of said snag-boats; if so, under whose superintendence was that work commenced and prosecuted?

Answer. There was an effort made, and it was successful, in removing stumps, snags, and sunken logs, and making cut-offs, and removing islands. It was done under the special superintendence of Captain Henry M. Shreve.

Question 12. Of what was this raft composed, and what was the extent of it in miles?

Answer. It was composed of timber of all sizes and nearly all kinds. It was from one hundred and sixty to one hundred and seventy-five miles in length.

Question 13. Was the said Shreve successful in removing said raft, or any part thereof, or was he not? How long was he engaged upon the same? Was his compensation increased while so engaged, or did it interfere with his other duties?

Answer. He was successful in removing one hundred and forty-five miles, and partially the balance. He was employed at this work four seasons. His compensation was not increased while so engaged. It did interfere with his other duties, but from his perseverance and continual travelling and attentions he managed to attend to his duties on this as well as other works.

Question 14. What distances above its mouth was Red river navigable for steamboats prior and subsequent to the removal of said raft?

Answer. I think it was, prior to the removal of the raft, navigable two hundred and seventy-five miles, and perhaps more; subsequently, it was navigable one hundred and sixty miles further; and at the

time Captain Shreve ceased to operate, it was navigable over a thousand miles; but no money being appropriated, the work was not continued. The raft formed again near the head of the former raft, and navigation has since been continued by the aid of a bayou canal and lake which runs around that portion of the new accumulation. There has never been any obstruction to prevent navigation below Shreveport, which is the outlet to northern and western Texas.

Question 15. What effect had the removal of the raft upon the cost of transportation of munitions of war, and army stores, and Indian supplies to Fort Towson, on Red river?

Answer. The cost was diminished about from three-fourths to seven-eighths. The former mode of transporting them was up the Waschita river; thence, by packing ass mules and horses, to Red river, above the raft; thence by pirogues and small boats.

Question 16. What was the condition of the public lands in the raft region prior and subsequent to the removal of said raft?

Answer. Prior, the low lands were inundated a large portion of the year, and the uplands were worthless for the want of communication; subsequently, the lowlands are materially improved by being drained and reclaimed from overflow, and made very valuable; also the uplands have been improved in value by their river communication.

Question 17. Has the United States been benefited, in a pecuniary point of view, by the removal of said raft; if so, to what extent?

Answer. Yes, to the amount of millions, by bringing into market all the lands adjacent to Red river, within the old limits of the raft, and above them in Louisiana and Texas, as well as in other respects mentioned above.

Question 18. Did said Shreve abandon, or intend to abandon, the use of said invention to the United States without just compensation therefor? and did he, or did he not, prior and subsequent to leaving the service of the United States, protest against the use of said invention by the United States, unless adequate compensation was paid therefor?

Answer. He did not abandon the use of said invention to the United States, and never intended to do so. He protested against the use of his invention, without adequate compensation was paid him by the United States, both prior and subsequent to his leaving the service of the United States.

Question 19. What, in your judgment, is the value of said invention?

Answer. Five hundred thousand dollars.

Question 20. Do you believe, or do you not, that the United States are justly indebted for the use of said invention? if so, what sum, to the best of your knowledge, will be a fair compensation to the said claimants for the use the United States have made of said invention?

Answer. I believe that the United States are justly indebted for the whole value of the invention—five hundred thousand dollars.

Questions by Attorney for the United States—B. T. Durrett.

Question 1. In what respect did the snag-boats of Captain Shreve differ from the machine-boats previously employed by Mr. Bruce, in removing snags, &c., from the Ohio river?

Answer. Bruce's boat was lever power, and worked by hand, and was worthless. Shreve's was worked by steam, with purchase-wheel power, with a butting-beam, and proved adequate to the purpose.

Question 2. What part of the machinery used in the snag boats were invented by Shreve, and what were the uses of those parts, and how do you know they were invented by Shreve?

Answer. All parts of the machinery were invented by Shreve. I was well acquainted with Mr. Shreve, and saw his drawings, and knew that there was no previous invention of the kind.

Question 3. Did not the main purchase and windlass used in the snag-boats, operate on the same principle as those used in the machine boats?

Answer. They did not operate in the same way as those of the machine-boat, or any boat used by Bruce.

Question 4. Were the hulls of the machine-boat and the snag-boat respectively similar to each other? If dissimilar, explain the difference.

Answer. They were not alike. The machine-boats were too securely built boats, with open hulls; the snag-boats' hulls were similar to those of other steamers, only built much stronger.

Question 5. Was the butting or snag-beam much extended across the snag room, near the beams, and serving to connect these two hulls together, contrived by Captain Shreve alone, or was it introduced while he was superintendent, on the suggestion of Capt. Dillingham, Tyson, Tellon, and others?

Answer. To my knowledge it was contrived by Capt. Shreve alone, long before the persons above mentioned knew of the invention; but its strength may have been improved by Mr. P. Tillon.

Question 6. Was not the Hercules, the only twin snag-boat constructed by the United States since Shreve was removed; and, if any other, name them, and by whom constructed?

Answer. There were others beside the Hercules, constructed by Colonel Long and Captain J. W. Russell.

Question 7. Was not that boat constructed on a plan materially different from that adopted by Shreve in the construction of the Heliopolis; and was there ever a boat constructed on his plan after he was removed?

Answer. There was no difference in machinery or working power, nor in the hull, excepting the Hercules had a reversed sheer, which in my opinion was an injury, instead of an advantage. The other boats were all similar to the Heliopolis, in all their working power.

Question 8. Was not ninety-nine hundredths of the work of removing snags from Red river done by other means than by boats constructed on the plan of the Heliopolis? if not, state what were the proportion of that work performed by means of single hulled boats, common steamers, hand and machine-boats, quarter-boats, &c., and what proportions by the boats constructed by Captain Shreve.

Answer. The boats used were all fitted up for the purpose by Capt. Shreve, and the snag-boat was used in removing snags which the hand boats and single hulled steamers could not remove, and in making canals and cut-offs, when other boats could not be used. One half the snags were removed by the snag-boat, the Archimedes; the river was too small, or snag-boats would have been used entirely for removing snags and logs.

Question 9. Is not the single hulled boat, introduced since Shreve was removed, a far more efficient and economical machine?

Answer. No, nor was the invention of the single hulled boats made after the removal of Shreve, but before his removal, and by him alone.

Question 10. Was any other part of the Heliopolis, than the snag-beam, invented by Shreve?

Answer. All other parts, excepting the capstans, rudders, and cooking stoves.

Question 11. Is the application of steam to raising snags and logs, and propelling boats, the great principle to which the success of the business referred to is done, and are not the particular sets of pulleys, beams, &c., by which this power is made available for the purpose, such as might have been expected from any qualified superintendent, and such as ought to have been required from one who was entitled to three thousand dollars per annum, at that day?

Answer. It takes a mechanical genius, like Shreve, to apply the power to produce the desired effect. Such service could not be expected of a superintendent.

Question 12. Was Captain Shreve a machinist?

Answer. He was, and was one of the first mechanical geniuses of the age.

Question 13. Was Captain Shreve out of business, and without means when he came into the employment of the government, and did not the position, salary, prequisites, and privileges of his office enable him to acquire a large estate of which he died possessed; and do you know of any money expended by him out of his pocket in making these improvements?

Answer. He may have been out of business just at that time, but would at all times have obtained a salary equal to that he obtained of the government. I do not know what means he had. He died possessor of property; but it was not made out of his salary or position as a government officer, to my personal knowledge. This property was made by speculations in other business.

Question 15. Can you certainly say, of your own knowledge, with regard to this invention, that the boats were of Shreve's own invention, or that they were merely constructed under his superintendence?

Answer. I can certainly say he was the inventor; as I know by conversation had with him on the subject, previous to the premium being given to Bruce for his invention. He did not submit his plan for the premium offered. I saw the drawings from which the boats were constructed, before the first boat was constructed, at least a year. I was in the employ of the government, on the snag-boats, in the removal of the Red river raft for several years, and I know that the statements made in the foregoing, are correct from my own personal knowledge.

Question 16. Do you know of any other matter relative to the claim in question?

Answer. I do not.

J. S. MOORHEAD.

STATE OF KENTUCKY, *Jefferson county.*

On this first day of August, eighteen hundred and fifty-six, personally came before me, the witness within named, and after having first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of J. S. Moorhead, taken at the request of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, deceased, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the names of Walker R Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, deceased.

The adverse party was notified, did attend, did not object.

JOHN H. HARNEY,
Commissioner.

Commissioner's fee, $8 40.

OFFICE OF THE COMMISSIONER OF THE COURT OF CLAIMS,
Louisville, April 10, 1856.

Deposition to be used in the case of Walker R. Carter, executor, and Lydia R Shreve, widow of Henry M. Shreve, deceased, against the United States, in a case now pending in the Court of Claims.

The parties having met by agreement—

Witness called by attorneys for claimants, Kinkead & Barr, deposes as follows:

My name is Peter Tellon; I am fifty-nine years of age; I reside in New Albany, Indiana; I am now engaged in the foundry business; I have resided in New Albany during the year last past; I have no interest in the case now in question, and am not related to the parties, nor either of them.

Questions by attorney for claimant.

Question 1. Were you not acquainted with the late Captain Henry M. Shreve, and if so, how long? Did he hold an office under the government of the United States; if so, what office, and how long did he hold the same?

Answer. I was acquainted with Captain Shreve in 1814; he was appointed superintendent in removing obstructions from the Mississippi, and perhaps other rivers; he was appointed by President Adams, and held the office until the close of President Jackson's administration, and some time afterwards; he must have held the place ten or twelve years

Question 2. Who was the inventor, or claimed to be the inventor, of the steam snag-boat?

Answer. Captain Henry M. Shreve; I never heard of any one else making any claim to the invention.

Question 3 What appliances or apparatus was used for removing obstructions from the beds of the western rivers prior to August, 1829, and what subsequent thereto?

Answer. Captain Shreve's boats, for removing obstructions, were the first I ever saw; I myself built the first one on a model furnished by Captain Shreve.

Question 3. What number of snag-boats have been built for and used by the United States?

Answer. I built the first three boats, and I think there have been five or six built since.

Question 4. Were or not all the said boats identical or similar in principle?

Answer. They were precisely the same.

Question 5. What was the navigable condition of the Mississippi, Arkansas, Missouri, Ohio, Cumberland, and Red rivers, about the month of August, 1829, and for several years prior thereto?

Answer. Very bad previous to 1829.

Question 6. What was the condition of said rivers about the month of September, 1841?

Answer. The improvement was so great that a person who had not travelled on them in the meantime, would hardly have recognized them. I travelled down the Mississippi in 1823, and found the river full of snags; and in 1829 I travelled down the river again, and found the snags removed.

Question 7. Were or not said boats used in the removal of obstructions from the rivers aforesaid?

Answer. They were the same snag-boats invented by Captain Shreve.

Question 8. Was there or not any inventions other than the snag-boats invented by Captain Shreve, then or now known, by which said obstructions could have been removed with as great or equal facility?

Answer. None that I ever knew of.

Question 9. The improvements made in navigation you have spoken of, were they or not made after Captain Shreve's snag-boats came into use?

Answer. They were.

Question 10. What effect had the use of said snag-boats upon the navigation of said rivers?

Answer. It lessened the risk greatly, and enabled boats to travel at night, when previously they had to lie by.

Question 11. Is or not property and life safe now when being transported on said rivers, and were they or not before the use of Captain Shreve's snag-boats insecure?

Answer. They are much safer now than previously; the risk is lessened considerably.

Question 12. State the situation and dimensions of some of the

largest snags, and the time required to remove them by the use of said snag-boats.

Answer. Some of these snags were four or five feet over; the length of time required to remove one depended on how it was imbedded; some would be removed in a short time, some would require a day's work.

Question 13. Had the United States attempted to remove said obstructions with such appliances as were in existence before the snag-boat was invented, how long a time would it have consumed, and how much would it have cost the United States to bring about the improvement you have spoken of above?

Answer. I believe that without some means similar to the snag-boats the improvements would not have been made.

Question 14. Did said Shreve abandon, or intend to abandon, the use of said invention to the United States without just compensation therefor; and did he or not previous and subsequent to leaving the service of the United States, protest against the use of said invention by the United States unless adequate compensation was paid him therefor?

Answer. Captain Shreve told me he claimed compensation of the United States; he had one model made and sent on for a patent.

Question 15. What, in your judgment, is the value of said invention?

Answer. I cannot say; it has been a great benefit to the public.

Questions by attorney for the United States—Mr. E. S. Worthington.

Question 1. In what respect did the snag-boats of Captain Shreve differ from the machine-boats previously employed by Mr. Bruce in removing snags, &c., from the Ohio river?

Answer. I do not know, for I never saw the machine-boats.

Question 2. Are you or not aware that machine-boats were employed for removing snags, &c., from the river by Bruce, or some other person, previous to the time Shreve entering the service of the government, as you have stated?

Answer. I know nothing of machine-boats used; I heard of a man's removing logs out of the river, but never saw him.

Question 3. What parts of the machinery used in the snag-boats do you ascribe to the invention of Captain Shreve? What are the uses of those parts, and what are your means of knowledge that he is the inventor?

Answer. I ascribe the whole of the machinery to Captain Shreve; its use is to raise snags out of the river; Mr. Shreve brought me the draft of the plan of the boat; I never saw the plan before, or heard tell of it, until Captain Shreve produced it to me, and I never heard anything to the contrary.

Question 4. When did Shreve bring you the draft of which you have spoken?

Answer. The plan of the snag-boat was produced, I think, in the month of July, 1827.

[Previous to the answer, the attorney for the claimant proposed to submit a paper to the witness to help his recollection. After inspect-

ing the paper, the witness stated that the date on the paper referred to the small boats previous to the steam snag-boats, and then gave the answer above.]

Question 5. Did Shreve invent the main purchase used in the snag-boat?

Answer. He did, to the best of my knowledge.

Question 6. Did he invent the windless?

Answer. The boat had no windlass.

Question 7. Had no main purchase similar to that used on the snag-boats, been operated previously to the particular one used by Shreve?

Answer. I never have seen any one operate in the same way it did on the snag-boat. The same purchase was used by Captain Shreve on the new steamboats he had built previously.

Question 8. Was the boat of which you speak Captain Shreve had brought you the draft of, in 1827, a twin-hulled or a single-hulled boat?

Answer. A twin-hulled boat.

Question 9. Were the hulls of the machine-boat you have spoken of, and of the snag-boat, respectively, similar to each other? if otherwise, explain the difference.

Answer. They were similarly connected, with the exception that the snag-boat had a large beam, called a butting-beam. The machine-boats were flats connected together, and the snag-boats were built as other steamboats are built.

Question 10. Were machine-boats both twin-hulled and single-hulled?

Answer. They were twin-hulled.

Adjourned.

October 1, 1856.

Parties met by agreement.

Was not the Hercules the only twin snag-boat constructed by the United States since Shreve was removed? if any others, name them, and say when, and by whom constructed.

There were others constructed after the removal of Shreve; one called the Sevier, one the Thomas Benton, and four others whose names I do not now recollect. Two were built under the superintendence of Colonel Long, and four, I believe, under the superintendence of Captain Russell. The Hercules, above spoken of, was one of the six. I now remember that one of the four was named the Colonel Long.

Question 12. Was not the Hercules constructed on a plan materially different from that adopted by Shreve in the construction of the Heliopolis; and was there ever a boat constructed on his plan after his removal?

Answer. There was no difference in the machinery or working part of the boat. The hull was built so as to reduce the sheers, which made them a foot higher in the middle than at the ends; that was the only difference between those constructed by Captain Shreve and those built after his removal. I consider all these boats on Captain Shreve's plan, with the exception mentioned above.

Question 13. Was not the single hull boat, introduced after Shreve was removed, a far more efficient and economical machine?

Answer. No; I built a single hull boat, called the Eradicator, for Captain Shreve, and all the single-hulled boats afterward built were on Shreve's plan. The single-hulled boats built after Shreve's removal, were not as powerful as the Eradicator I built for Captain Shreve.

Question 14. State whether that is not a different machine from the Heliopolis.

Answer. It was a different machine, as it was only to raise logs, and the Heliopolis was for both raising and cutting.

Question 15. Was any other part of the Heliopolis invented by *Shreve* than the snag-beam?

Answer. All the working part of the boat I consider the invention of Captain Shreve; I know nothing to the contrary.

Question 16. Was not the project of applying steam in combination with windlasses, pulleys, or levers, on a twin boat, to raise snags, suggested by John Bruce and Captain Delafield before it was adopted on the recommendation of Shreve, in the construction of the Heliopolis?

Answer. Not to my knowledge.

Question 17. Are not the improvements made on the Heliopolis and Hercules as important as the introduction of the snag-beam to the twin steamer?

I know of no improvements that have been made; I have seen all that have been built, and built three during Shreve's superintendence, and one since.

Question 18. Is not the application of steam to raising the snags and logs, and propelling the boats, the great principle to which the success of the business referred to is due, and are not the particular sets of pulleys, beams, &c., by which this power is made available for the purpose, such as might have been expected from any qualified superintendent, and such as ought to have been required from one who was entitled to three thousand dollars per annum at that date.

Answer. I consider the combinations in the machinery to be Captain Shreve's invention, and that they were necessary to produce the result, and they would not be expected of a superintendent.

Question 19. Was Captain Shreve out of business and without means when he came into the employment of the government, and did not the position, salary, perquisites, and privileges of his office enable him to acquire a large estate, of which he died possessed?

Answer. I do not know.

Question 20. Do you know of any money expended by Captain Shreve out of his own pocket in making experiments? if so, state when and where, and what amount, and to whom paid.

Answer. I do not.

Question 21. Do you know any more about this invention than that the boats were constructed under Captain Shreve's superintendence?

Answer. Captain Shreve employed me to build the first boat upon a plan which he furnished me. It was the first boat built.

Question 22. Was Captain Shreve a machinist?

Answer. Captain Shreve was a mechanical genius.

Question 23. Do you know of any other matter relative to the claim in question?

Answer. I do not.

PETER TELLON.

STATE OF KENTUCKY, *Jefferson County.*

On the tenth of April and the first of October, eighteen hundred and fifty-six, personally came before me the witness within named, and after having first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Peter Tellon, taken at the request of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Walker R. Carter, executor, and Lydia B. Shreve, widow of Henry M. Shreve, deceased.

The adverse party was notified, did attend, and did not object.

JOHN H. HARNEY,
Commissioner.

WAR DEPARTMENT,
Washington, April 25, 1856.

SIR: In reply to your letter of the 17th instant, I enclose you a letter from the chief topographical engineer, enclosing copies of letters addressed by John Bruce and David Prentice to the War Department in 1824, exhibiting their plan for snag-boats for use in the western rivers.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

M. BLAIR, Esq., *Solicitor,*
Court of Claims, Washington.

BUREAU TOPOGRAPHICAL ENGINEERS,
Washington, April 22, 1856.

SIR: In compliance with the request of Mr. Solicitor Blair, (referred to this office,) I send copies of the letters applied for.

Allow me to say that there are many papers in this office, having a bearing upon Captain Shreve's claim.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Col., Corps Topographical Engineers.

Hon. JEFFERSON DAVIS,
Secretary of War.

1 B.

LOUISVILLE, *July* 10, 1824.

SIR: In consequence of an advertisement published in the newspapers, I send you two plans for clearing the Mississippi of snags and sawyers. It may not be improper to state, that I a millwright, engineer, and steamboat owner; and that for two years I run a steamboat in the Mississippi.

The plans I offer, may be considered as too expensive, but I am satisfied no lesser means will answer the purpose. Any attempt made to saw off, or cut the trees, will be either abortive or dangerous. It is impossible, in the rapid current of the Mississippi, to use any saw or tool under water at any considerable depth; and to cut snags at less than seven feet under the surface, will only render them more dangerous; and which all steamboat owners will deprecate. There seems to me no way but to pull them up bodily, and deposit them where they will be harmless. To effect this, requires powerful means, and such I shall endeavor to describe.

The first plan consists in building or procuring, a double or twin steamboat, somewhat similar to the ferry boats in use on the Delaware or North river, but stronger, and more distant from each other. The water wheels must be at the *outsides* of the boats, so as to leave the space between them entirely clear, as it is in that space the work is to be done. On this account, also, the connecting beams of the boats must be high out of water; perhaps fifteen or twenty feet. Between the boats, and well supported on strong frames at each end, a strong windlass is to extend. This is intended to act on the snag, and must be of a strength equal to supporting forty or fifty tons. It must be furnished with a chain and proper rings, hooks, &c., for grasping the snag Motion may be given to it from the engine in various ways, but I would recommend the following method as being strong and easily repaired, which is an object of great consequence in the place where the service is wanted. On the end of the main windlass, let there be a large plain wheel fixed, say twenty or twenty-five feet chain—the outside of this wheel to be so broad, as to allow some six or eight turns of hawser to be coiled; of which one end would be made fast, as in the barrel of a common crane; the other end of the hawser to lead to a lesser windlass in the same boat, which is to be capable of attachment to the engine at pleasure. The main windlass must be pretty high above water, to allow of a long pull at once. The boat and machinery being procured, the manner of using would be easy. It is to be noted that all, or nearly all, the snags lie in a slanting direction, with the tops of the trees down the stream, and the roots fast at the bottom.

With this kind, the operations would commence by running the boat so as to bring the snag or sawyer between the boats. The main chain is then to be attached to the snag; the wheels thrown out of gear, and the small windlass into it, when in all probability the snag would give way and be drawn out from the ground. If it did, the boat might be directed to deep water, and then drop it where it would be

harmless; or the root might be cut away, which would sink, while the top would float. From sawyers little resistance would be found. It might be found sufficient with them, and very slanting snags, to raise the top considerably out of the water, and cut them off at its edge, on this being done the top would float away, and the root part would settle below the water so as to be out of the way.

With large, upright and deeply fixed snags, the trouble would be greater. With them I would, after heaving on them, run the boat up and down or across, so as to shake and loosen them. If once it yielded in the least, the continued shaking and heaving would bring it out.

It is scarcely necessary to enter more into detail on the best way of using this implement. A man of common good sense would very soon discover how to make the most of it. I am satisfied in having recommended a plan by which approach to the snags is made safe and easy, and their extraction certain. The expense of boat and machinery, would be about six or seven or eight thousand dollars, according to the size and goodness. This may be considered as a great outlay, on an untried plan; but I have no doubt that it would prove cheapest in the end.

The other plan is recommended by Mr. Thomas W. Bakewell, a considerable steamboat owner, and formerly my partner. It consists in this: To buy an old steamboat, which may be done for three or four thousand dollars, or to hire a sound one for the season of low water, which could be done for the same money; the larger and heavier the better, and with a stern wheel if possible. The method of using is as follows:—Run up to the snag, make fast to it a very strong cable; pay out about one or two hundred yards of the cable, and put the boat under full headway right across the stream. On the cable being brought to a stretch, the whole momentum of the heavy boat would be brought to bear on the snag with a force nothing could resist. The snag must either be wholly, or partly torn up, or broken at the bottom, or the cable must part. If the snag is partly torn up, a repetition of the pull will bring it out. When loosened it may be disposed of as before recommended.

These are the plans recommended by practical men, well acquainted with mechanics, and with the obstructions of the river. If any personal reference is necessary to give weight to my opinion on this subject, I would name Samuel Richards and Frederick Graff, of Philadelphia, as men who know me well, and whose knowledge of these matters make their opinions of value.

I am, sir, very respectfully, your obedient servant,

DAVID PRENTICE.

SECRETARY OF WAR, *Washington.*

2 B.

WASHINGTON CITY, *September* 1, 1824.

An explanation of the annexed draft of a boat, designed to clear the Ohio and Mississippi rivers of obstructions from sawyers, planters and snags.

a. a. Two flat-boats, eighty feet long and ten feet wide, with a fifteen feet rake at each end, decked from stem to stern, with a space of ten feet between them, thirty-eight feet of which is decked.

The boats are strongly connected with timbers, &c. The remaining space is left open, part of which the water wheel revolves in, which propels the boat; the remainder space is to be appropriated for the purpose of hoisting such sawyers as may be elevated by the tackles.

b. A crab and tackles to elevate the sawyers.

x. Sliding sills to support the sawyers.

c. Moveable shaft with holes perforated through it at regular intervals, marked and numbered.

d. A crane for elevating or depressing the saw and frame, and for regulating the position at which it is to be placed.

e. Two moveable iron guides which move through the crane, and numbered to correspond with the elevation or depression of the shaft, the hooks marked 2. 2. are to be attached to the saw frame marked 2. 2. for the purpose of regulating its movements.

f. Crank at the extremity of the shaft c., which are connected at 1. 1.

g. Saw and frame in a horizontal position.

h. Sections of a cast iron cog-wheel, eight inches in diameter, the inner side of the cylinder of which is of an octagon form, and the moveable shaft slides up and down through it.

o. Windlass for hoisting sawyers, the tackle rope passing through a mortise in a post marked p.

q. q. q. Posts on which are to be placed cross-pieces, with tackles suspended similar to b. and for the same purposes.

NOTE.—An additional shaft at an elevation of 45° is omitted in the draft, which is contemplated to be placed in a proper place, with the necessary apparatus for the purpose of cutting sawyers that are of two low an elevation for the horizontal saw, namely those of about 45° altitude.

JOHN BRUCE.

[For 3 B, see original.]

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4 B.

September 7, 1824.

A description of the model of a boat deposited in the War Office. With a view to illustrate the principle of said boat, the two moving

shafts at the end of the model are calculated to cut twenty feet deep under water, or more if necessary. The shafts to which the moving shafts are annexed are to be banded with strong iron bars, say one foot broad and one inch thick, leaving a space for the moving shafts to pass through; the moving shafts must be of iron, say three inches square; the guides to keep the saw in the proper position must be of strong bar iron, and must be of sufficient width to let the saw frame pass freely through them; the moving shafts and guides must be so numbered that their equal depth may be known with precision; the shaft attached to the side of the model is calculated to cut twenty feet or more deep, and is to be of iron, say three inches square. As a reference to the model to see in what manner it moves through four pieces of cast iron by which it is to be worked, will perhaps more fully illustrate, the cranes are intended to convey the saws to the trees to be cut; the wheels which work these three moving shafts must be so calculated as to pass the saws one hundred times across the timber for every time the horses move around; about twenty inches or two feet is as much as the saws ought to be drawn across the timber; the four pieces of timber across the boat are intended to work four tackle blocks; in the centre of the open space the ropes are passed through the posts by a roller to four windlasses. With this I trust the board of engineers will be able clearly to comprehend the principle of the machine.

JOHN BRUCE.

JOHN C. CALHOUN, Esq.,
Secretary of War.

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5 B.

November 1, 1824.

SIR: This is a decription of a model of a boat intended to clear the Ohio and Mississippi rivers of sawyers, planters, and snags. The two planks at the bottom represent two flat-bottomed boats thirty feet long; the one on which the horses are to work the boat is to be fourteen feet wide, the other say seven, strongly connected by timbers above, as the model will fully show; the post through which the iron shaft moves is to be strongly bound by iron bands; at each end of the post is to be a cast iron box fitted in the ends of the post, three inches by two in the clear, to be fixed true in each end; the iron shaft is to pass through said boxes; the shaft is to be numbered, likewise each of the guides through which the saw frames pass; suspended by two cranes, the one saw calculated to cut horizontally, the other perpendicularly, each from the iron shaft passing through the post; the guides, saw-frames, the guide for the chisel all of bar iron; the chisel of steel, the head of cast iron, and of different lengths, some to cut twenty feet deep; the collar at the bottom of the guide through which the chisel is to work is calculated to conduct the chisel in different directions, but as most of the sawyers are about seventy-five degrees elevation, the mode of cutting is as follows: the two pieces of wood

connected to the timber across and at the bottom of the boats are to be of iron; the longest one is to be forced into the tree to be cut, making the boats the weight to force the sawyer down, and while the operation of sawing is performing, the cutting with the chisel also; the lever is to be fourteen feet long against six inches to be worked by a windlass; the chisel is to be worked by a pile-driver, calculated to give an inclined or perpendicular stroke; the wheel on boat No. 8 is to be worked by horses, and the walk extended out to twenty feet diameter; the cog wheel to be ten feet diameter, to work a horizontal shaft, No. 7; the wallower to be ten feet diameter on said shaft; the shaft around which the rope or chain winds over the space between boats, ten inches. The mode of raising trees is to drive an iron bolt into the tree and wind the rope two or three times round the tree and roll it over, and then tongs to raise with; the cross-beam under the boats is to be slid out, when necessary: the post is to turn in cast iron, that is, cast iron is to work in cast iron; the boats to be propelled by wheels, oars, poles, &c.

JOHN BRUCE.

Mr. JOHN C. CALHOUN,
Secretary of War.

WAR DEPARTMENT,
Washington, July 31, 1858.

SIR: In compliance with the request contained in your letter of the 16th instant, asking, for the use of the Court of Claims, the correspondence between the War Department and Henry M. Shreve in the years 1826 and 1827, showing the terms of his employment as superintendent of the improvements in the Ohio and Mississippi, I enclose herewith a report of the colonel of the corps of topographical engineers transmitting the papers called for by you.

Very respectfully, your obedient servant,

W. R. DRINKARD
Acting Secretary of War.

R. H. GILLETT, Esq.,
Solicitor, Court of Claims.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, July 30, 1858.

SIR: In answer to the letter of R. H. Gillett, esq, Solicitor, asking for "the correspondence between the War Department and Henry M. Shreve in the years 1826 and 1827, showing the terms of his employment as superintendent of the improvements in the Ohio and Mississippi by removing obstructions," I have the honor of transmitting herewith a copy of the letter from the chief engineer to Mr. Shreve, dated December 1, 1826, appointing him superintendent, which defines his duties and states the compensation to be paid him for his services.

Upon examination of the correspondence transferred to this office in relation to the improvement of western rivers, there does not appear to be a letter from Mr. Shreve accepting this appointment; but from the subsequent correspondence it is clearly shown that it was accepted, and that he continued in the service of the government as superintendent of said improvements until 1841.

Although Mr. Shreve was in the service of the government at the time he received a second appointment as superintendent, under the act of March 2, 1831, which required that he should give bond for the faithful discharge of his duties as superintendent. As will be seen from copies of Mr. Shreve's letters herewith enclosed, this second appointment was promptly accepted and the necessary bond given, and that Mr. Shreve complained of not having his compensation increased. This, it is supposed, led to the change in his compensation from a per diem to an annual salary, as provided for in the act of July 3, 1852. (See Stat. at Large, vol. 4, p. 553.)

Mr. Gillett says: "What I wish to ascertain is the true understanding of the parties concerning what services Shreve was expected to perform for the United States."

This appears to be clearly shown from the letter appointing Mr. Shreve the superintendent, and other letters, copies of which are transmitted herewith.

Respectfully, sir, your obedient servant,

J. J. ABERT.
Colonel Corps of Topographical Engineers.

Hon. JOHN B. FLOYD,
Secretary of War.

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1 G.

ENGINEER DEPARTMENT,
Washington, March 6, 1827.

SIR: In fulfilment of a promise made to the Hon. R. P. Letcher in a letter from this department of the 2d instant, a copy of that letter is transmitted herewith, and you are hereby authorized and instructed to settle the accounts of Mr D L. McKee in the manner specified in that letter whenever they may be presented or furnished to you with the authentications required and set forth therein.

A copy of Mr. D. L. McKee's account current is also transmitted herewith, and the sum of five hundred dollars will, without delay, be deposited to your credit in the bank at Louisville, to provide you with the means of settling the accounts, amounting, as appears by the account current, to a few cents more than that sum.

I have, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Superintendent, &c., Louisville Ky.

2 G.

ENGINEER DEPARTMENT,
Washington, March 28, 1827.

SIR: At the last session of Congress a law, (approved on the 3d of March, 1827,) was passed for improving the navigation of the Ohio river, and appropriating for that purpose thirty thousand dollars, of which law the enclosed is a copy, taken from the National Intelligencer.

The Secretary of War believing that your experience in navigating the Ohio and knowledge of the obstructions of that navigation will enable you to point out the mode most likely to fulfil the intentions of Congress as set forth in the law above referred to, has instructed me to call upon you for your opinion in regard thereto, and especially to direct your attention to that part of the river usually called the Grand chain near its mouth, which, should you deem it necessary, you will visit whenever the water is in such a condition as to enable you to examine the position of the rocks, and to ascertain the direction which the channel ought to take to admit steamboats to pass and repass in safety the obstructions at the Grand chain at the lowest stage of the water.

You will please to state your opinion whether these obstructions could best be removed by contract or otherwise: if by contract, the probable amount of effecting what is required by the law, so far as relates to the channel at the Grand chain, in one contract, and the probable amount necessary for the removal of snags, sawyers, and other obstructions in a separate contract or contracts, or in any other way which you may consider most advantageous and effectual.

You will report your views upon this subject to this department as early as practicable, setting forth what you may deem the most judicious and economical application of the sums appropriated, and also of the probable time required to effect the objects contemplated by the law.

It would be very gratifying to receive also with your report, if it can be done, a rough sketch of the river, showing the prominent obstructions, &c., and particularly those of the Grand chain.

I am, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Superintendent, &c., Louisville, Kentucky.

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3 G.

ENGINEER DEPARTMENT,
Washington, April 9, 1827.

SIR: Your letter addressed to the Secretary of War under date of the 20th of February last, reporting your opinion upon the question of Mr. Bruce's ability to fulfil with the means in his possession the contract for removing the obstructions to the navigation of the Ohio and

Mississippi rivers, and giving also your views as to the mode most likely to effect the object of the law by which the contract was authorized, has been received and duly considered.

From the condition in which you represent the preparation of Mr. Bruce for carrying on his contract, and the unfavorable opinion you express as to his ability to execute the contract with the means possessed by him, and his ability in other respects to complete the contract within a reasonable time, if at all, it has been determined by the Secretary of War to declare the contract forfeited, of which you will advise Mr. Bruce, if in your vicinity, and if not, his proper agent. The enclosed is a copy of a letter which has this day been written to Mr. Bruce, and addressed to him at Louisville.

The Secretary of War approves of your plan for removing obstructions in the Mississippi river, and has directed me to say to you that you will take measures to carry into effect as soon as practicable the project presented in your letters before mentioned.

You will make an estimate of the sums that will be required for effecting each object, as near as you can make such estimate, stating in detail the items of expenditure, and forward the same to this department, to be submitted to the Secretary of War, and at the same time state to what place you would desire the money to be sent, and at what particular period.

I am, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Superintendent, &c., Louisville, Kentucky.

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4 G.

ENGINEER DEPARTMENT,
Washington, May 14, 1827.

SIR: I have received your letter of the 26th ultimo, with the accompanying sketch of part of the Ohio river, comprehending what is called the Grand chain, reporting, in compliance with instructions from this department of the 28th March last, your views in regard to the proposed improvement of the navigation of that river provided for by the act of Congress of the 3d of March last.

To carry into effect the provisions of this act of Congress the Secretary of War has to-day appointed Colonel William Courtenay, of Pittsburg, the agent for the government, and his instructions upon the subject have been prepared and transmitted to him. Colonel Courtenay was one of the commissioners appointed by the State of Pennsylvania for improving the navigation of the Ohio between Pittsburg and Wheeling, and he has been represented as well qualified by his knowledge and experience for this service. Colonel Courtenay will have the entire charge of this business, subject of course to the supervision of the Secretary of War, to be exercised by the agency of the Engineer department. This arrangement will supersede the necessity

on your part of taking any further steps in the business, or of visiting the Grand chain for the purpose mentioned in my letter of the 28th of March, before referred to; and will leave you free to apply all your attention to the improvement of the navigation of the Mississippi river.

I have also to acknowledge the receipt of your letter of the 29th ultimo, with your estimate of funds deemed necessary for prosecuting your operations for four months; and according to your request the sum of $5,000 will be placed in the United States bank at Louisville, Kentucky, to your credit, without delay. This sum includes the amount which you ask for to enable you to make immediate preparations for commencing operations, and with the $500 promised you in March last for the settlement of the accounts of the late Col. McKee, for which latter sum a requisition was made on the 11th instant, makes up the whole amount of funds which you require up to this time. I find your letters are addressed to the Secretary of War. The covers of them only should be so addressed, and endorsed Engineer service, to save postage, this department not having the privilege of franking.

The regulations established for the government of this department direct all officers and agents charged with the execution of objects under its control to make general reports of their operations, and forward them in time to reach the department by the 10th November, in order that the department may be enabled to introduce the substance of the reports into its annual report to Congress. I refer you to the regulations on this subject, with a view to your compliance with them in this respect; and the department will expect to receive from you at that time, or as soon thereafter as may be found practicable, your report of operations, giving, as it hopes, a handsome exhibit of work done.

I am, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Capt. H. M. SHREVE,
Louisville, Kentucky.

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5 G.

ENGINEER DEPARTMENT,
Washington, December 11, 1827.

SIR: Your letter of the 24th ult. requesting permission to dispose of such articles of public property now in your possession as are of a perishable nature and cannot be preserved for service until next season has been received, and agreeably to your recommendation you are now authorized to make the proposed sales, and you will credit the government with the proceeds thereof in your account current for the next quarter.

Your suggestion of the propriety of constructing steamboats for the removal of obstructions in the main channel of the river has been duly

considered by the department, and although little doubt is entertained of the superior efficacy of that kind of vessels in removing the impediments to the navigation, yet as their construction will necessarily involve a very considerable expense, it is desirable that the department should be furnished with an estimate of the expense of building one or more boats as might be deemed necessary by you before authorizing the measure.

It is yet uncertain whether additional appropriations will be made by Congress at the present session to prosecute the improvements which you superintend, but it is believed that they are considered of sufficiently national importance to warrant the expectation that liberal provisions will be made to complete a work which promises to be of such great public utility, and it is necessary therefore that the department should be furnished with an estimate of the sum necessary for carrying on your operations in the most vigorous manner during the ensuing year. This estimate should set forth in detail the amounts requisite for each particular purpose, such as labor, machinery, boats, stores, &c., and it is highly desirable that it should be forwarded to the department with as little delay as possible.

In making your estimates of the expense of constructing steamboats or other vessels, the greatest regard should be paid to economy; strength, and efficiency are the greatest objects to be obtained, and these only are necessary. The same attention to an economical expenditure of the public funds for all other objects is equally desirable. A requisition was made yesterday for $3,000, to be placed to your credit in the U. S. Bank at Louisville, Kentucky.

I have, &c.,

ALEX. MACOMB,
Major General and Chief Engineer.

Mr. H. M. Shreve,
Superintendent Mississippi and Ohio rivers, Louisville, Kentucky.

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6 G.

Engineer Department,
Washington, June 27, 1828.

Sir: Your letter of the 9th instant has been submitted to the Secretary of War, together with the previous ones on the subject of building a steamboat to be used in improving the navigation of the Mississippi river. The Secretary approves of the *use* of a steamboat for that purpose, but to avoid the heavy expense of constructing one, which would probably be of little value after having performed the contemplated service, it will be preferable to hire a boat, if a suitable one can be obtained in that manner, or else to purchase one, which could probably be effected, not only with less delay but a less cost, than the construction would require. To avoid unnecessary delay, however, in case it should be absolutely necessary to build, a requisition has been made for $10,000, to be deposited to your credit in the Bank of the United States at Louisville, which sum, if not required for obtaining

a steamboat, will be applied by you at the proper season to the prosecution of the work under your charge. I embrace this opportunity to remind you of the necessity of making a report of your operations in time to be laid before Congress at its next session, which report it is hoped will exhibit a considerable progress during this season.

I am, &c.,

A. MORDECAI,
Lieut. Engineers, Assistant Chief Engineer.

Mr. H. M. SHREVE,
Superintendent, Louisville, Kentucky.

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7 G.

ENGINEER DEPARTMENT,
Washington, May 14, 1829.

SIR: Your letter of the 20th April relating to the improvement of the Ohio river at the Grand chain has been submitted to the Secretary of War, who instructs me to authorize you to commence the operations for that purpose as soon as practicable, in the manner proposed in your letter, without regard to the proposals you may have received for doing the work by contract.

Respectfully, &c.,

C. GRATIOT,
Brigadier General and Chief Engineer.

H. M. SHREVE,
Superintendent, &c., Louisville, Kentucky.

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8 G.

ENGINEER DEPARTMENT,
Washington, April 9, 1829.

SIR: At the late session of Congress an appropriation of $50,000 was made "for continuing to improve the navigation of the Ohio and Mississippi rivers, which funds, as far as relates to the Mississippi river, you continue to apply as heretofore.

The Secretary of War has directed that the operations on the Ohio river for this year shall be confined to the improvement of the navigation at the Grand chain, and they are now placed under your direction. The mode of improvement suggested in your report on the subject, dated April 26, 1827, is approved, and you will, as soon as practicable, make the necessary arrangements for carrying it into effect. It is deemed proper that, after having well arranged the details of the project, you advertise in the papers of the vicinity for proposals to execute your plans, reserving, however, to the government the right of rejecting them if it should appear more advantageous to have the work done by hired labor under your direction, or that of the overseer whom you may employ for the purpose.

As this subject is one which has excited much interest among those

interested in the navigation of the western waters, it is very desirable that a beneficial result be obtained at an early period, and you will therefore give it your attention, so that no delay may take place when the waters shall have fallen sufficiently to admit of the commencement of operations.

The funds applicable to this object are a balance of $15,000 of the appropriation "for removing obstructions to the navigation of the Ohio river, besides a small sum in the hands of Mr. Courtenay at Pittsburg, which he will refund to the treasury, and a proportion of the appropriations made for improving the navigation of the Ohio and Mississippi rivers. Mr. Courtenay is instructed to deliver to you the machinery and public property which he has used in his operations on the upper part of the Ohio river, a list of which accompanies this letter, and for which you will give your receipt. Such of these articles as may be useful in your future operations will be applied to that purpose, the remainder, if any, may be disposed of at public sale, and the proceeds applied to the same purpose.

Herewith you have a copy of your communication to the Secretary of War, above referred to, and of the sketch which accompanied it.

I am, &c.,

C. GRATIOT,
Brevet Brigadier General and Chief Engineer.

HENRY M. SHREVE, Esq.,
Sup't Imp't Miss. river, Louisville, Kentucky.

P. S.—It is thought that a width of 400 feet will be sufficient for the channel through the Grand chain, and you will, therefore, propose this width in your advertisements, unless you think it very material to adopt a greater one, in which case you will report your views to this department. The advertisement should be inserted in a paper of each of the principal towns on the Ohio or its tributaries, where it is likely that proposals may be made.

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9 G.

ENGINEER DEPARTMENT,
Washington, July 6, 1829.

SIR: Your letter of the 25th ultimo, suggesting the propriety of improving the navigation of the Ohio river between the mouth of the Louisville and Portland canal and that of Falling run, has been submitted to the Secretary of War, by whom I am instructed to authorize the removal of obstructions in that portion of the river; you will, therefore, make the necessary arrangements for effecting that object at the present session.

Respectfully, &c.,

By order: A. MORDECAI,
Lieutenant Eng'rs, Ass't to Chief Eng'r.

H. M. SHREVE, Esq.,
Sup't, &c. Louisville, Kentucky.

10 G.

ENGINEER DEPARTMENT,
Washington, June 5, 1830.

SIR: I have to acknowledge the receipt of your letter of the 28th ult., accompanied by corrected vouchers, to be passed to the Third Auditor; that of the same date on the subject of John Sowers's pay, and that of the 29th ultimo, enclosing estimates for the Ohio and Mississippi rivers for the year 1830, and for the month of June, and statement of funds on hand, and to inform you that a requisition has been made for the balance of the appropriation "for improving the navigation of the Ohio river," $5,000 to be remitted to you, which covers the amount required to complete the estimates for June, agreeably to the statement received. I have also to request that in future you will charge the amount of your per diem in your quarterly accounts current; this is desirable, in order that the department may know at all times the true state of the appropriations.

I am, &c.,

C. GRATIOT, *B. G.*

Captain H. M. SHREVE,
Superintendent, &c., Louisville, Ky.

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11 G.

ENGINEER DEPARTMENT,
Washington, December 1, 1826.

SIR: You have been recommended to the Secretary of War as a suitable person to superintend the execution of a contract now existing between the War Department and Mr. John Bruce, of Kentucky, for improving the navigation of the Ohio and part of the Mississippi river, by removing all snags, sawyers, planters, and other obstructions of that description impeding the same, and the Secretary of War has determined to appoint you superintendent accordingly, and by his direction you are hereby notified to that effect.

Should you determine to accept this appointment you are requested to give me notice to that effect. The appointment will be considered to take effect at the date of your acceptance of it, and from the same date you will be considered to be entitled to receive the compensation to be allowed for the performance of the duties of the appointment, which will be at the rate of six dollars a day—the rate which was allowed to the late superintendent, Col. McKee.

Should you accept the appointment, it is desired that you lose no time in commencing the duties thereof, which are defined in the contract and the several communications to Col. McKee, Capt. Sowers, and Mr. Bruce, copies of which are transmitted herewith, for your information and government, and consist of:

1st. The contract.

2d. A letter from the Engineer department to Col. McKee, dated

the 21st of July, 1826, accompanied by a report from the Engineer department to the Secretary of War, dated the 17th July, 1826.

3d. A letter from the Engineer department to Col. McKee, dated the 19th of May, 1826.

4th. A letter to Col. McKee from the Engineer department, dated the 22d July, 1826.

5th. Two letters from the Engineer department to Captain John Sowers, dated the 21st of November, 1826, accompanied by a form for a certificate.

6th. A letter from the Engineer department to Mr. John Bruce, dated the 21st of November, 1826.

7th. An extract of a letter from Col. McKee to Mr. Bruce, dated the 13th of August, 1826.

It will be perceived by the letter to Col. McKee of the 21st of July and the letter of instructions to Capt. John Sowers of the 21st of November, that the authority contained in the letter to Col. McKee, of the 19th of May, to enter into an agreement with Mr. Bruce for having work executed by him in addition to that contemplated in his contract has been recalled.

The time allowed for the completion of the contract will expire on the first of next month, and as it cannot possibly be completed within that time, the government will be authorized by the terms of the contract to close it then, or at any time afterwards, and exact the penalty of non-fulfilment on the part of Mr. Bruce.

Should this course be pursued, although it could not be considered unjust, it might be thought severe, as it has been the practice of the government in its transactions with individuals to grant reasonable indulgences, when good faith and ability to fulfil their engagements have been manifested, in a satisfactory manner, by the individuals to whom indulgences under such circumstances have been granted.

It is not intended to withhold from Mr. Bruce the benefit of such indulgence with reference to this contract, should the conditions of good faith and ability to fulfil his engagements under it, such as have been exacted under other circumstances of a similar nature, be manifested by him in a satisfactory manner.

You are therefore hereby authorized to allow Mr. Bruce to progress with the operations contemplated by his contract, after the first of next month, and until this authority may be recalled, in the same manner as though the period for completing the contract had not expired.

It is desired that you should report from time to time your opinion respecting the adequacy of the means employed by and at the disposal of the contractor, the manner and effect of their application towards the execution of the contract, and whether the results are calculated to sustain the conditions above alluded to. Your reports above required to be made will be laid before the Secretary of War, and will enable him to determine upon the expediency of granting further indulgence to Mr. Bruce, by extending the time for completing his contract to a period within which he would be enabled to effect it without difficulty.

It is proper to remark that the results which have been produced by the operations under the contract heretofore have not been satisfactory.

In adverting to this fact, which is well known, it is not designed to attribute to Mr. Bruce any delinquency of good faith, or ability to execute the contract properly. It is intended merely to advise you of the opinion entertained respecting the manner in which the contract has been executed heretofore, and of the expectation that it shall be differently executed hereafter, in order that, being thus informed of the views of the government on the subject, you may be enabled to judge of the operations of the contract that may hereafter be carried on shall conform to them.

A small steamboat was built by Major Long at Steubenville, to be used by the superintendent to facilitate the accomplishment of his duties. Major Long considered that the superintendent could not discharge his duties efficiently unless provided with the facility of rapid tow-motion, equal at least to that which would be afforded by a steamboat. He was authorized to build the boat in question, and she is therefore disposable for the purposes of the superintendency of Mr. Bruce's contract.

The enclosed order from Major Long to the person in whose charge he left the boat at Steubenville, directing him to deliver the boat to you or to your order, will enable you to procure her by going or sending for her.

The funds applicable to the fulfilment of Mr. Bruce's contracts, and of defraying the expenses incidental to the superintendence of its execution, have been provided for by an appropriation of $75,000, and the expenses incurred in making the experiment for the removal of a sand-bar, near Henderson, were paid from the same appropriation.

Of the $75,000 appropriated for the purposes mentioned, there has been expended:

This sum paid Mr. Bruce as a premium for the best model of a machine for removing the obstructions contemplated by his contract		$1,000 00
And this sum in making the experiment on the sand-bar, near Henderson		4,513 13
Together with this sum paid by Major Babcock, Major Long, and at the Treasury department for expenses incidental to the superintendency		4,099 35
To which add this amount already paid to Mr. Bruce on account of his contract	$18,563 93	
And this amount which, in addition to the amount already paid, is required to fulfil the obligations of the government in relation to the contract, and must therefore be reserved for that purpose	41,346 07	
Making together this amount		60,000 00
The amount expended and to be reserved will be		$60,612 48
Which deducted from the $75,000 will leave this amount, which may be considered applicable to the expenses of the superintendency and other contingencies		5,387 52

Deducting from the amount last stated $1,500 for Colonel McKee, and $500 for Capt. Sowers, drawn from the treasury and deposited in the branch of the U. S. Bank at Louisville 2,000 00

There will remain in the treasury applicable to the purpose stated 3,387 52

The cashier of the Branch of the Bank of the United States, at Louisville, has, since the death of Col. McKee, given notice that the $1,500 deposited to his credit in that bank had not been drawn, and would be returned subject to such disposition as the government might direct to be made of it. He has been notified that the disposition to be be made of it, as soon as it shall be determined on, would be communicated to him.

It has been determined to put it into your hands, with a view to its being applied to the fulfilment of the objects for which it was destined, and the cashier will be directed accordingly to pay it over to you.

The payment of the compensation to Col. McKee at the rate of six dollars a day, from the 7th of June, 1826, to the date of his acceptance of the superintendency, to the date of his death, and of the wages due to the persons employed by him in aid of the superintendency, are supposed to be the only objects to which it is applicable. If there be any other demands against the superintendency, and they appear to be correct and reasonable, you are authorized to liquidate them. If there be any such, and you entertain doubts respecting their propriety and reasonableness, they may be referred to the decision of the department.

After making the payments above authorized, there will be doubtless a balance of the $1,500 remaining in your hands. There will be also a balance in the hands of Capt. Sowers, which he will be directed to pay over to you.

These balances will be applicable to defraying the expenses which may be incurred for objects connected with the superintendency, and whenever additional sums may be required for such objects, they will be supplied upon your estimates specifying the objects and the amount required for each.

For information respecting the manner in which these estimates should be made, and the manner of keeping and rendering accounts, and making reports, returns, &c., you are referred to the regulations of the department, a copy of which is transmitted herewith.

In addition to the letter from Major Long to Mr. Jacob Shourse, directing him to deliver the steamboat to you or to your order, which it has been stated would be sent herewith, a letter from Major Long to F. A. Ruggles, esq., of Henderson, Kentucky, directing him to deliver to you or your order, any of the articles connected with the experiment for the removal of a sand-bar at that place, and deposited with him for safe keeping, which you may require, and a letter from Major Long to you respecting the steamboat, are transmitted herewith.

You are authorized to pay Mr. Shourse the wages adverted to in Major Long's letter, from the 29th of July last, and also to pay the expenses of storage, &c., upon the articles deposited with Mr. Ruggles for safe keeping.

A letter to Capt. Sowers and another to Mr. Bruce, informing them

of your appointment, and directing them to recognize it, are enclosed, to be perused by you and delivered.

I have the honor, &c.,

ALEX. MACOMB,
Maj. Gen. and Chief Engineer.

Capt. H. M. SHREVE.

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12 G.

LOUISVILLE, *May* 12, 1831.

SIR: Your letter dated the 28th ultimo, informing me of my appointment by the President to superintend the improvement of the Ohio and Mississippi rivers from Pittsburg to New Orleans, authorized by an act of Congress, approved the 2d of March last, has been received. I have to inform you that I accept that appointment. The bond required will be executed and forwarded in a few days. I am anxious to be furnished with the necessary instructions from the department as soon as possible. The time is now far advanced when I should have been making the necessary preparations to carry on that work to advantage. Until I am in possession of instructions I cannot furnish estimates, consequently much time will yet be consumed before I can commence the necessary preparations, which will probably much impede the progress of that work during the low water of the ensuing summer and fall.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

HON. SECRETARY OF WAR, *Washington, D. C.*

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13 G.

LOUISVILLE, *May* 20, 1831.

SIR: Your letter dated the 10th instant, informing me of a requisition in my favor for $15,267, to be remitted to me at this place, has been received. The bond for fifty thousand dollars required of me agreeably to the act of Congress, approved 2d of March last, for the improvement of the Ohio and Mississippi rivers from Pittsburg to New Orleans, has been executed, but is delayed in consequence of the Hon. C. A. Wickliffe and the circuit judge being absent attending courts in some of the adjoining counties. So soon as either of them is in town, the required certificate will be signed, and the bond forwarded to Washington.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

14 G.

LOUISVILLE, *May* 24, 1831.

SIR: Herewith I transmit to the department the required bond, agreeably to the conditions of my appointment by the President, for improving the navigation of the Ohio and Mississippi rivers from Pittsburg to New Orleans, authorized by the act of Congress approved the 2d of March, 1831.

I am, sir, very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

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15 G.

Extract of a letter from Henry M. Shreve.

"HENDERSON, KY., *December* 28, 1831.

SIR: I have to acknowledge the receipt of your letter dated the 16th of October last, also your letter dated the 28th of the same month. The information furnished by the latter date, relating to my compensation, is very unexpected to me. I had no doubt when I received the appointment to superintend the improvements in the Ohio river, under the law of the 2d of March last, that I was to receive some additional compensation for that service. Believing otherwise, I should most assuredly have declined to accept, under all the embarrassments and clogs embodied in that law. So soon as my business for this year is closed, I will visit Washington. Until that time I shall not relax in my exertions to serve the government to the extent of my abilities."

* * * * * *

Very respectfully, your obedient servant,

HENRY M. SHREVE,
Superintendent, &c.

Brig. Gen. C. GRATIOT,
Chief Engineer, Washington.

No. 1.

LOUISVILLE, *February* 20, 1827.

SIR: I have this moment returned from the mouth of the Ohio river, where I have been for the purpose of examining Mr. John Bruce's boats and machinery, used by him in removing trees, limbs, roots, &c., from the bed of the river, as stipulated in his contract with the War Department, for the improvement of the navigation of the Ohio and Mississippi rivers. I, therefore, proceed to my opinion

on the same, accompanied with some other observations on the subject of the improvement of the navigation of said rivers.

In the Mississippi river the obstructions which are most dangerous to its navigation are those situated on the sand-bars and in the chutes or channels past the islands that are entirely dry at low water; all boats ascending the river in time of high water are obliged to pass through the above-mentioned chutes, and over the bars that are dry at low water, consequently the boats are exposed to great danger from the numerous snags and roots that are situated in those parts of the river. There are also many dangerous obstructions situated in the bed of the river, at points where there is not less than ten feet water at lowest stage; and others in the main channel of the river, which has an average depth of twenty-four feet at low water. The obstructions on the sand-bars and island chutes may be removed without much difficulty by cutting them off close to the sand and burning them when dry, (which will be their situation in the fall and winter season.) Those situated in the channel of the river may be either drawn from their position, or broken off at the bottom of the river; such of them as come up with the roots may be cut off and the roots sunk in deep water, which will prevent their becoming injurious to the navigation. There are some, however, that are so firmly fixed in the mud and sand, and are so large and strong that it will be impossible to remove them in any other way but by cutting them off at a sufficient depth under water, which may be done by a machine of proper construction, under the control of a man of skill and judgment.

The boats and machines used by Mr. Bruce on the Ohio river, I am confident will not answer on the Mississippi, for several reasons; *First*, the machine is too slow in its operation; *secondly*, the saws cannot be managed in the strong current of said river, ten feet under water; *thirdly*, the boats cannot be got alongside of the snags to be operated upon when in rapid water, where a large proportion of them are situated, nor will they be safe in sustaining the weight required when held stationary in the stream. I find Mr. Bruce's boats much wrecked, some of them are sunk, and all of them in bad condition. I am firmly of the opinion that the contract cannot be complied with by the use of Mr. Bruce's boats and machinery, &c., under the control of any man.

I am not personally acquainted with Mr. Bruce, but from all the information I am able to get relating to his capacity to execute the contract, I am induced to believe that he will not comply with the terms of the contract within any reasonable time; nor do I think it possible for him to comply with it for the balance of the appropriation. Very near one-third of the sixty thousand dollars has been paid to him, and from a caculation well known to every man of observation who is acquainted with the navigation of those rivers, one-tenth of the work is about the amount of what has been done. The distance from Pittsburg to the mouth of the Ohio is at least one hundred miles less than the distance from the mouth of the Missouri to New Orleans. Within the latter distance the obstructions embraced

in the contract, are beyond doubt ten times more numerous than they were in the former distance, besides those in the Mississippi are much more difficult to remove, without considering the difference in the climate and the difficulty of procuring men to labor on the Mississippi during that season of the year when they will be annoyed by the mosquitos and subject to the prevailing diseases of the country. Moreover, the execution of the contract has not been strictly complied with on the Ohio river, and has been valued at three times the amount it should have been, agreeably to the value of the whole of the work contracted for by Mr. Bruce.

From the above calculations I form my opinion relating to the probability of Mr. Bruce being able to comply with the terms of the contract agreeably to the views of the government.

I am also of the opinion, that to extend the time, and permit Mr. Bruce to proceed with the execution of his contract, would be a useless loss of time and expenditure of money. Notwithstanding, I believe Mr. Bruce has saved several thousand dollars on the work done, which I account for by knowing that the work has not been properly done, and the improper estimate of the value of the work compared with the whole extent of the contract.

In the event of Mr. Bruce being allowed to stop, I beg leave to offer my opinion to the department in relation to the improvement of the navigation of the Mississippi river, hereafter, which will give general satisfaction to those persons most interested in the improvement of its navigation.

By commencing at about three points on the river, as soon as the water is low in the summer, and removing all obstructions from that part of the river which is dry at low water. This may be effected in one season, say in the ensuing fall and winter; which when done would undoubtedly lessen the risk of navigation one-half; the expense of removing all those obstructions, will be small compared with the expense of the whole work, (agreeably to the views of the government,) and with the immense advantage it must be to the navigation of the river. The river being freed from all the snags, logs, shoals, &c., that are situated in those parts of it that are dry at extreme low water, will make the navigation perfectly safe during that season of the year when nine-tenths of the business is done in the country is done on the river. To make an estimate of the expense of this portion of the work, with any degree of correctness, would be impracticable; but from the best calculation I am able to make, I am of the opinion it can can be done for about $25,000 if judiciously managed.

I have received from Captain John Sowers the following property appertaining to the superintendency, viz: one barge, one anchor, two cables, with mast, yard, and square sail, one awning, one chopping axe, one hatchet, one jack plane, one green yawl with sail, one skiff, one cooking stove, one ¾ auger, and one water bucket; all of which are at Trinity, together with the balance remaining in his hands of the $500 remitted him on his being temporarily appointed to the superintendency, the amount of which is $436. I have not been able to settle the accounts of the late Colonel McKee, in relation to the superintendency,

on account of the distance from this to his former place of residence, but will lose no time in doing so as soon as called on.

I have the honor to be, sir, very respectfully, your ob't serv't,

HENRY M. SHREVE,
Superintendent, &c.

Hon. JAMES BARBOUR,
Secretary of War.

ENGINEER DEPARTMENT, *March* 15, 1858.

I certify the foregoing is a correct copy of the original on the files of this office.

H. G. WRIGHT,
Captain of Engineers, in charge.

A. No. 2.

THE UNITED STATES PATENT OFFICE,
To all persons to whom these presents shall come greeting:

This is to certify, that the annexed are true copies of the petition and oath in the application of Henry M. Shreve, patented September 12, 1838.

In testimony whereof, I, Joseph Holt, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affix-
[L. S.] ed, this 16th day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

J. HOLT.

To the Commissioner of Patents:

The petition of Henry M. Shreve, of the city of St. Louis, in the county of St. Louis, and State of Missouri, respectfully represents, That your petitioner has invented a new and useful machine for removing trees, roots, logs, &c., (called snags and sawyers,) from the beds and channels of rivers, which may be called the "Archimedes" or "*Steam Snag-boat,*" which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided; he having paid thirty dollars into the treasury, and complied with other provisions of the said act.

HENRY M. SHREVE.

COUNTY OF WASHINGTON, *District of Columbia, ss:*

On this thirtieth day of June, 1838, before the subscriber, a justice of the peace in and for said county, personally appeared the within named Henry M. Shreve and made solemn oath that he verily believes

himself to be the original and first inventor of the before described machine for removing trees, roots, logs, &c., (called snags and sawyers,) from the beds and channels of rivers, and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

C. H. WILTBERGER,
Justice of the Peace.

A, No. 3.

From the National Intelligencer of June 5, 1824.

ENGINEER DEPARTMENT,
Washington, June 1, 1824.

Under the provisions of the act of Congress, entitled "An act to improve the navigation of the Ohio and Mississippi rivers," approved on the 24th of May last, a premium of one thousand dollars will be given to any person who shall present to this office, on or before the 1st day of November next, a plan, machine, or instrument, best calculated to remove the sawyers, planters, and snags, in the Mississippi river, so as to render the navigation free and safe; the plan, machine, or instrument to be accompanied by such drawing, model, or description, as will enable the board of engineers clearly to comprehend the same, to which board they will be submitted for examination and approval; and upon being so approved of, the premium will be awarded and paid. All communications in relation to this subject will be addressed to the Secretary of War, and endorsed "engineer service."

ALEXANDER MACOMB,
Major General Chief Engineer.

Published in Pittsburgh, Pennsylvania; Liberty Hall, Ohio; Cincinnati, Ohio; Louisville, Kentucky; St. Louis, Missouri; New Orleans, Louisiana.

A, No. 4.

UNITED STATES PATENT OFFICE.
July 17, 1858.

SIR: I enclose certified copies of the petition and oath in the application of Henry M. Shreve, patented September 12, 1838.

From the absence of correspondence in this case, it is difficult to decide upon what is original and what amended matter. In the specifications erasures occur, but it is not shown when they were made.

Very respectfully,
J. HOLT, *Commissioner.*

R. H. GILLET, ESQ.,
Solicitor Court of Claims, Washington.

No. 9.

BUREAU TOPOGRAPHICAL ENGINEERS,
Washington, March 17, 1859.

SIR: I have the honor to acknowledge your direction to report upon a letter from S. H. Huntington, esq., chief clerk of the Court of Claims, enclosing an order of the court for information from the War Department to be used in the case of Lydia R. Shreve, administratrix, *vs.* the United States.

The information called for, involved an examination of the correspondence in regard to western river improvements for a period of thirty years, from which the following information has been obtained:

1st. In regard to "the names and date of construction of all twin hulled and single hulled snag-boats," from the year 1828 up to the present time.

It appears from the correspondence that prior to 1853, there had been seven snag-boats built, viz:

1. The Heliopolis, twin hulled, commenced in 1828, and completed in 1829.
2. The Archimedes, twin hulled, constructed in 1832.
3. The Eradicator, twin hulled, commenced in 1836, and completed in 1837.
4. The Samson, twin hulled, built in 1843.
5. The Sevier, twin hulled, built in 1843.
6. The H. M. Shreve, singled hulled.
7. The Dragon, single hulled.

There appears to have been several small steamers in the service, viz: the Java, Souvenir, Pearl, and Laurel, which are not designated as snag-boats.

Under the act of August 30, 1852, making appropriations for the improvement of the western rivers, John W. Russell, esq., the agent of this office, was authorized, under date of October 12, 1852, to construct five twin hulled snag-boats, for the building of which contracts were immediately entered into, and the boats were completed in June, 1853. They were numbered and named as follows:

No. 1. The Thomas H. Benton.
No. 2. The Hercules.
No. 3. The Bell.
No. 4. The Sevier.
No. 5. The Terror.

2. "Whether any of the said twin or single boats were at any time rebuilt or repaired, if so when? together with any other information in your department tending to elucidate said claim."

It is shown from the correspondence, that the Heliopolis, built in 1829, was rebuilt in 1837, and that the Archimedes, built in 1832, was rebuilt in 1837. These are the only boats which appear to have been rebuilt.

With regard to the repairs of these boats, it would seem to be almost impossible to arrive at any just conclusion in regard to the several dates at which the repairs were made. From the nature of the

service, repairs were always necessary to some of the boats, and to designate the periods at which they were made would seem to involve the neceessity of a thorough examination of the accounts of Captain Shreve and others engaged in making the expenditures for them.

It may be proper to remark, that from the papers it appears that a notice was served upon J. W. Russell, the agent of this office, dated 20th September, 1842, of an application by H. M. Shreve, for an injunction to restrain him from using the snag-boats belonging to the government. From this notice it appears that the patent to Shreve was granted on the 12th September, 1838, and would expire on the 12th of September, 1852; unless, therefore, the exclusive right to use the improvement has been extended to the representatives of Shreve, they cannot claim for its use upon the boats constructed in 1853.

Respectfully, sir, your obedient servant,

J. C. WOODRUFF,

Capt. Top Eng'rs, assistant to Bureau, in charge.

Hon. J. B. FLOYD,

Secretary of War.

THE CLAIM OF HENRY M. SHREVE.

The following considerations are presented in support of the claim of Henry M. Shreve for the use of his snag-boat by the United States, on the Ohio, Mississippi, Missouri, Arkansas, and Red rivers, since the year 1829, *and for the future use of the same:*

I. Captain Shreve was the original inventor of the combination of machinery in the snag-boat for which he claims compensation. This appears—

1. From the report of J. J. Abert, colonel corps topographical engineers, and the accompanying report of captain, (now colonel) George W. Hughes. In answer to an inquiry of a committee of the House of Representatives, Colonel Abert, in transmitting the report of Colonel Hughes, says: "From this it will appear that the merit of the invention for which Captain Shreve has obtained a patent is justly due to him." And Colonel Hughes concludes a full report on the subject as follows: "The conclusion which I have arrived, after a minute examination of the case, is that the patent of Captain Shreve, for the improvements claimed by him, was issued for good and sufficient reasons, and that he was the inventor or constructor of these improvements."

2. From the letter of the Commissioner of the Patent Office, Mr. Ellsworth, February 21, 1843, in answer to the inquiries of the same committee, and the accompanying report of Charles M. Keller, examiner of patents. The commissioner states that Mr. Keller's "examination has been very particular. After referring to the plans of Mr. D. Prentice and Mr. Thomas W. Bakewell, which he shows were different from and inferior to that of Mr. Shreve, the examiner adds: "As to the plan proposed by Mr. John Bruce, it has no other resem-

blance to Captain Shreve's plan than the employment of a twin boat, which, as I have stated before, was not new at the time it was proposed by Mr. Bruce, and, therefore, can have no bearing on the validity of Captain Shreve's patent, which could in no way be affected by any of these plans were the subject submitted to legal investigation."

3. Although it would seem that these two reports would be conclusive on the question, even Colonel Long, to whose remarkable report we shall have occasion to refer, does not seem to dispute the claim of essential parts at least of this machine. He says, in his report, "With respect to the second count, which relates to the introduction of the 'snag-beam,' I am decidedly of the opinion that this appendage is of great value and importance to the twin snag-boat; and, agreeably to the best information I can obtain, its introduction and use are due to the memorialist. At any rate, it would be very difficult to controvert the latter opinion in this case, since the claim appears to have been corroborated by the oath of the memorialist, and there does not appear to be any adverse claimant to contest his right to the invention. So essential is the snag or butting-beam to the efficient and successful operation of the twin steam snag-boat, that a boat of this class would be of little use or value without such an appendage."

4. John Sowers, in his deposition, states that he was the assistant to Samuel McKee, the former superintendent; was conversant with the building of various snag-boats, and superintend the construction of the Heliopolis, and for about four years had charge of that boat. He says that "he has always considered Captain H. W. Shreve as the inventor of the steam snag-boat Heliopolis, and that Captain Tyson had nothing to do with it; and that the fact of Shreve being the inventor can be now established at Louisville and New Albany."

It thus appears beyond dispute, by the concurrent testimony of those most competent, and with the best means to determine the question, and of a most zealous opponent to the claim of Captain Shreve, that he is the original sole inventor of this twin steam snag-boat, or at least of parts that are essential to its successful operation. Whatever value there is in this plan for removing snags belongs to Mr. Shreve. The patent which he has received is a valid one, and he alone is entitled to compensation; and whoever uses his invention must pay for its use, or be subjected to the penalties of the law if the inventor sees fit to assert his legal rights."

II. No other machine, used before or since, has been effectual in the removal of the large and deeply imbedded snags on the western rivers.

1. Major Wm. H. Chase, of the U. S. corps of engineers, says: "of its comparative excellence I think there can be no divided opinion; because all other contrivances had failed to remove forcibly the ponderous and deeply imbedded snags, either exhibited singly or strongly bound together in compact rafts, such as then existing a few years ago in the Red river; and because there is nothing more direct, simple, powerful, and cheap, than the application of your snag-boat driven by steam."

2. Captain Bowman of the same corps, in a report to the War Department in 1835, says: "Through the agency of this machine, the largest snags and logs are extracted with ease, many of which, with-

out its invention, could never have been removed." And in a letter to the memorialist, he says: "Indeed I do not think without it that these rivers could have been cleared of snags, rafts, &c., in a century."

3. Major R. Delafield, in an official report, 1830--'31, describes the efficiency of the machine of Mr. Shreve, in terms which fully show that he considered that the important results which he describes is attainable only by this steam snag-boat.

4. Captain Russell, late U. S. superintendent for the removal of obstructions in the western rivers, says: "As to the value and usefulness of the snag-boat, I unhesitatingly state, that it is my decided opinion that the improvement which has been made by them, could not have been effected without their agency, and that they are absolutely necessary for the use of the United States for many years yet to come."

5. Messrs. Tellon & Himes, eminent builders of steamboats at New Albany, Indiana, state, under oath, that they are well acquainted with the Mississippi and Ohio rivers before and since the removal of their obstructions; that they "believe that there were no other means known by which that great work could have been effected but by the snag-boat."

6. Captain Israel S. Moorehead, an experienced navigator of the western waters, and formerly a commander of the snag-boat Heliopolis, in his affidavit, says: "I further state, that I know of no other means by which this great work could have been accomplished, unless the government would have gone to at least four times the expense."

7. In addition to the evidence furnished above, which was before the former committees, is the testimony of John C. Carter, lieutenant United States navy, in his deposition taken on the 24th January, 1850. He says that he commanded one of the steamboats employed by Captain Shreve, in 1833, in removing the raft in Red river. He further says: "I have been well acquainted on the western waters; once commanded a steamer on the Ohio and Mississippi rivers, and have never heard a doubt expressed in relation to the credit being due to Captain Shreve for the invention of the only snag-boat which operated successfully in removing obstructions in the rivers of the west," &c.

8. Henry E. Lee, in his affidavit taken 28th December, 1849, states that he was in the employment of Mr. Shreve, as captain of the steamboat "Pearl," whilst removing a great raft in Red river, and that he also commanded the steam snag-boat "Heliopolis" during one season. "I have been," he says, "engaged as master and pilot on steamboats for many years, and am well acquainted with the great improvement that has been made in the navigation of the Mississippi river by the twin steam snag-boats, and I know of no other means by which said improvement could have been made."

9. Although the same testimony is given by others, whose affidavits are on file in this case, we will add only the statement of Colonel Long himself in his report. Even he is constrained to say, "there can be no doubt that the twin snag-boat can be rendered far more powerful than boats of lighter draft, and consequently that obstruc-

tions of the most obstinate and formidable character may be raised and removed by the former, when a similar operation could not be performed by the latter." He adds, that "cases of this sort, however, are comparatively very seldom to be witnessed," &c.

It is thus conclusively and undeniably established that these formidable obstructions could not have been removed at all by any other known means, or certainly only at very enormously increased expense.

III. The snag-boat of Captain Shreve was eminently successful in accomplishing the important result arrived at in its construction. The testimony of all the gentlemen above referred to, and of a large number of masters of steamboats, and others conversant with the obstructions on these rivers, is very full and strong on this subject. We refer to only a very few of those on file.

1. Major Chase says, "It seems that the advantages already produced throughout the thirty thousand miles of western river navigation are so clearly manifest that no one can doubt them, nor the excellence of your contrivance by which so large an amount of labor has been produced in so short a time, and at so small a cost."

2. Captain Bowman, in his report to the department, says: "The department is already in possession of the most unquestionable proofs of the efficiency of this machine, drawn from its hitherto successful operations; but I cannot here omit an opportunity of rendering the merited tribute of praise to its excellence and to the ingenuity of its inventor. No machine can surpass it in its adaptation to the work in the execution of which it is now engaged. The machine is simple in its construction and easy in its application; while in power it has been found adequate to overcome promptly every obstacle it has encountered."

3. Major Delafield, in his official report, says: "To remove them, (the snags,) the present superintendent has contrived and put in operation a steamboat provided with the necessary machinery, worked by the engine of the boat, which answers the purpose admirably well," &c.

4. Captain Russell says: "I have witnessed the progress of the great and important improvement made in that river by the operation of the snag-boat, the benefits of which are of so much importance that it is difficult to estimate the value of them." And again: "It is a machine of such vast importance that it cannot be dispensed with," &c.

5. Captain John Sowers, who superintended the building of the Heliopolis, and commanded it for some four years, says: that "he found her to be one of immense advantage in removing obstructions from the bed of the rivers, which must be well known to the public;" and that, "after much experience in the improvement of rivers, he could not now suggest an improvement upon the snag-boat Heliopolis."

There are many other affidavits on file from persons of the highest character and best means of knowledge, showing the immense value of this improvement, and the great diminution in the loss of property and life arising from the use of Mr. Shreve's steam snag-boat.

It will be perceived that the essential facts as to this claim are

conceded by Colonel S. H. Long. In addition to what has been quoted above, Colonel Long, in a letter dated 23d April, 1844, says: "In allusion to our late conversation on the subject of the snag-boat, you mistake me if you suppose I have at any time designed to disparage or undervalue the merits and utility of such an invention. On the contrary, I have on all occasions borne testimony to its importance in improving the navigation of the Mississippi, Missouri, Arkansas, and Ohio rivers. Its utility in removing rafts, &c., like those of the Red river, I have doubted, and am still of the same opinion."

In September, 1843, Colonel Long made a report to the topographical bureau, called "A few historical items in relation to the removal of sawyers, snags, logs," &c. This led to, or was a part of, a previously existing personal controversy between Colonel Long and Mr. Shreve, in the course of which it became apparent that Colonel Long had committed many errors. The most important of them he acknowledged in letters to Mr. Shreve, published in the Louisville Journal of April 9, 1845, being a part of a long communication from Mr. Shreve, embodied in that communication. This paper is on file in this case. On the 24th April, 1848, Colonel Long makes a report to the head of the Topographical bureau on the same subject, in which feeling and prejudice seem largely to have entered. The attempt seems to be to deprive Mr. Shreve of the credit of removing the Red river raft; but, as on the main points—of Mr. Shreve being the inventor of the snag-boat, and of the value of that invention—he is constrained to decide in favor of the claimant, it is unnecessary to advert to this unpleasant controversy, further than to say that the report is on file, and with its various depositions, showing that the statements in relation to the Red river raft are erroneous, and that it is mainly occupied with arguments, comments upon the petition of Mr. Shreve, and other matters which are not very appropriate to such a document, and are quite unimportant.

IV. Mr. Shreve is entitled to compensation for the use of his invention by the United States prior to obtaining a patent.

It being unquestionable that he was the inventor, that the work could not be accomplished by any other means, and that this machine did accomplish this important result with efficiency and cheapness, it would seem to follow, as a matter of course, that common honesty would require that he should be paid for it. But the extraordinary objection is made that, because Mr. Shreve was in the employment of the government at a fixed salary, the government are entitled not only to the services of the person so employed, but that they are entitled to use any invention that he may have made while so employed. The same rule applies to a person employed by the government as to any engineer, or superintendent, or laborer, hired by a corporation or an individual; and if the argument is a tenable one, no such person could ever be entitled to obtain a patent for any invention or improvment while so employed, but his employer could take out the patent for his own benefit. So strange and debasing a doctrine as this was never applied, or claimed to be applied, to any person hired on a fixed salary to render a given service. The humblest laborer is not such a slave as this would

make him; but if he has the genius to invent, the law gives him the reward of his inventive genius, and he can procure his letters patent, and maintain his rights as well against the person for whom he labors as any other. It would be the grossest injustice for a nation to adopt a different rule towards a citizen from that which they prescribe by her to others.

V. If, however, it should be claimed that the government can shield itself from affording a just compensation for this valuable invention, on the ground that no patent had been obtained—a most unworthy defence for a great nation—there is surely no excuse for not paying for the use of this improvement after the patent issued. They did use it six years after the patent issued, and about eight years after the application was made for the patent. Not only has the government no right to "take private property without just compensation," but it was and is in the power of any inventor to protect himself against such invasion of his rights by a resort to the courts. For, although the government might desire to avail itself of its freedom from suit to deny the just rights of a citizen, yet the person acting under an illegal order can be reached, and the wrong done to an inventor can be arrested by injunction, and in some cases a suit at law.

VI. The government will in future require the use of this invention. It is a remarkable fact, that, although Mr. Shreve conducted his experiments at his own expense, the first boat built by him was for the government, and was from the beginning perfectly successful; and that no improvement of any importance has been since made by any one. And, further, that there is no other machine at the present day that can supply the place of this, or accomplish the important results obtained by it. Unless, therefore, the government mean to abandon entirely the plan of preserving the navigation of these great avenues of commerce, they will in future require the use of this invention. Do they expect to use it in future without paying for it? Do they mean to avail themselves of the patent right of Mr. Sheve—his property—and deny all compensation?

VII. What would be a fair compensation for the past and future use of this invention?

Of the importance of it there can be no doubt. Not only the quotations which have been already made, but a large number of affidavits on file, all show that without the aid of the invention of Mr. Shreve, the obstructions would not have been removed from the rivers. All agree that the saving of property and of human life has thus been immense. It is not merely the saving of the property which would otherwise have been destroyed, but the diminution in freights, and the many advantages arising from an obstructed navigation of some of the greatest thoroughfares of the world. The saving to the government in the expense of transporting its troops and stores, has, as appears from official reports, been very large; and the still greater saving in the expense of doing the work itself, furnishes a strong reason for a liberal appropriation. The nature of this invention is such, that it can only be used by the government; and any compensation which has been heretofore named is very far short of the amounts which are constantly received by inventors for the sale of their patents to

individuals, although of far less value than this improvement of Mr. Shreve.

It appears from an official report that the government expended, under the direction of Mr. Shreve, in their various works, $1,275,547 02. How many millions would have been required without this invention cannot, of course, be stated in figures; but the entire evidence in this case shows that the amount would have been enormous.

The disbursing of so large an amount of money was a most responsible and burdensome duty, and one for which a liberal commission would be paid by individuals in a similar case, and for which the government themselves pay a commission in many other cases. And there is no claim that this money was not all honestly disbursed and faithfully accounted for.

More than fourteen years of Mr. Shreve's life were expended in these responsible and arduous duties, and the salary for such services was by no means a large one.

What compensation should be granted to him by Congress for his valuable improvement must be left to the sense of justice which will control the decision of the committee and of Congress.

IN THE COURT OF CLAIMS.

ON THE PETITION OF SHREVE'S EXECUTOR.

Brief of the United States Solicitor.

This is a claim for compensation for the use by the government of an invention made by the deceased, of a machine to remove snags, &c., from the beds of the western rivers.

The facts of the case are as follows:

In 1824, Congress appropriated $75,000 (4 Stat. p. 32) for the improvement of the Ohio, Mississippi, and Arkansas rivers, and under that law an advertisement was published offering $1,000 premium for the best plan to carry out the object of the law.

Several plans were submitted. One by the claimant, mentioned in a letter of July 7, 1824, in which he proposed to cut off the snags six feet under water, so as to be out of reach of boats. He did indeed propose in that letter to apply steam to the *removal* of those snags, but it was to drive the machinery, (a model of which he proposed to send in,) with which the logs were to be *cut* off six feet below the surface of the water. To drag the trees from their bed he thought would not be practicable.

David Prentice, by letter dated July 10, offered a plan of his own which consisted of "a double or twin steamboat, somewhat similar to the ferry boats in use on the Delaware or Noth river, but stronger and more distant from each other. The water-wheels must be at the outside of the boat, so as to leave the space between them entirely clear, as it is in that space the work is to be done. Between the boats, and well supported on strong frames at each end, a strong windlass is to extend. This is intended to act on the snag, and must be of strength

equal to supporting forty or fifty tons. It must be furnished with a chain and proper rings, hooks, &c., for grasping the snag. Motion may be given to it from the engine in various ways; but I would recommend the following method as being strong and easily repaired, which is an object of great importance in the place where the service is wanted: On the end of the main windlass let there be a large plain wheel fixed, (say 20 or 25 feet chain,) the outside of this wheel to be so broad as to allow some six or eight turns of hawser to be coiled, of which one end should be made fast, as in the barrel of a common crane, the other end of the hawser to lead to a lesser windlass in the same boat, which is to be capable of attachment to the engine at pleasure. The main windlass must be pretty high above the water, to allow of a long pull at once. The boat and machinery being procured, the manner of using would be easy. It is to be noted that all the snags lie in a slanting direction, with the tops of the trees down stream, and the roots fast at the bottom. With this kind, the operations would commence by running the boat so as to bring the snag or sawyer between the boats. The main chain is then to be attached to the snag, the wheels thrown out of gear, and the small windlass into it, when in all probability the snag would give way, and be drawn out from the ground. If it did, the boat might be directed to deep water, and then drop it where it would be harmless, or the root might be cut away, which would sink, while the top would float. From sawyers little resistance would be found. It might be found sufficient with them and very slanting snags, to raise the top considerably out of the water, and cut them off at its edge. On this being done, the top would float away, and the root part would settle below the water, so as to be out of the way."

"With large, upright, deeply-fixed snags, the trouble would be greater. With them I would, after heaving on them, run the boat up and down, or across, so as to shake and loosen them. If once it yielded in the least, the continued shaking and heaving would bring it out.

"It is scarcely necessary to enter more into detail on the best way of using this implement. A man of common good sense would very soon discover how to make the best of it. * * * The expense of boat and machinery would be about six to seven or eight thousand dollars, according to the size and goodness. This may be considered as a great outlay on an untried plan, but I have no doubt it would prove the cheapest in the end."

He then describes Bakewell's plan, which was to use a steamboat and a strong cable, which, being fastened to the snag, to pay out 200 yards, and put the boat under full head of steam, and thus bring the whole momentum to bear.

He says: "Any attempt to saw off or cut the trees will be either abortive or dangerous. It is impossible in the rapid current of the Mississippi river, to use any saw or tool under water at any considerable depth; and to cut snags at less than seven feet under the surface will only render them more dangerous, and which all steamboat owners will deprecate. There seems to be no way but to pull them up bodily, and deposit them where they will be harmless."

On the 24th of September 1824, John Bruce offered a plan, which consisted of two flat boats, 30 feet long, 10 feet apart, strongly connected with timbers, to be propelled by wheels, oars, poles, &c , and furnished with an apparatus for cutting off the snags below the surface of the water, to be worked by horse power.

On the 14th July, 1824, Lieutenant (now Major) Delafield of the engineer corps, suggested the propriety of using a steamboat of sufficient size for this purpose, (removing snags, &c.,) by attaching a hawser (hemp or chain) to the snag or planters, and made fast to the boat, and by applying the power either in the direction of the log or circularly. I conceive (he says) the most firmly planted tree may be either removed from its position to the deep water, or broken off to such a depth as entirely to do away with its pernicious effects. I believe this plan susceptible of being the most easily carried into effect, and at the minimum expense, when compared with the various machines contrived for sawing under water."

The board of engineer officers to which this and other plans were submitted, reported in favor of Bruce's plan, and a contract was entered into with him, by which, in consideration of $60,000, he was to remove all the snags in the Ohio and Mississippi rivers. He entered upon the execution of the contract, and Major Babcock, an engineer officer, was appointed to superintend his operations and give him certificates as the work progressed. He began at Pittsburg and got below Wheeling, and obtained $8,000 of the appropriation, but several boats having been destroyed by snags which had been subjected to this process of cutting, and the steamboat men in the Ohio having become satisfied that the work was not satisfactorily done, presented a memorial to Congress, and made such representations to the Executive as to occasion the superseding of the engineer officer and the despatch of Major Chase to inspect the work, whose reports confirmed the accounts given them by steamboat men and others.

In 1826, Col. McKee was appointed superintendent of the improvement, but declined acting. Capt. Shreve succeeded McKee, and, after examining Bruce's operations and machinery, reported so unfavorably upon them that the department annulled the contract with Bruce, and by letter of 9th April apprised Shreve of it, and also authorized him to proceed with the removal of the obstructions on a plan which Shreve had himself proposed, in the letter dated 20th February, 1827, in which he had given his views on Bruce's plans and operations.

This letter from the department forms part of the voluminous correspondence called for by the claimant, and the passage which refers to the fact that Shreve had furnished a plan is pencilled for the attention of the court; but the letter of Shreve, which shows what the plan was, was not called for. I have supplied the omission. It does not propose a steam snag-boat on the plan of the Heliopolis, as might probably have been inferred in the absence of the letter itself, but what it does propose is as creditable to the judgment of Shreve in this stage of his employment as the snag-boat was after he had had greater experience in the business. He advised that several parties should be employed on the river when the water was low, to cut up

the snags found in that part of the bed found dry at that period. This would effectually clear the river of all obstructions during that period of the year when nine-tenths of the business was done, that is, when the river was high. This plan, aided by a small steamboat and the machine boats with which he had been experimenting on the obstructions *under* water, had, it appears by his letter of 1st October, 1827, (No. 6,) answered well during the summer of 1827. But he says "on making some experiments with the machine boats in the main channel of the river, I am induced to believe that they cannot be managed to advantage in that part of the river where the current is very rapid and the trees very heavy, which, when drawn out of the mud in the bottom, leaves from twenty to thirty feet of the tree below water, consequently the current takes so great a hold of the trunk and roots that the boats are unmanageable until the tree is hauled to the surface of the water, and the roots cut off, which will necessarily occupy so great a portion of time that the boats will in most cases drift from five to ten miles down the stream, and be liable to great danger from other obstructions in the river below, and will require twelve men to work the boats up to the former position, at the rate of about one and a half mile an hour; besides, there are a great number of trees so firmly planted in the mud that they will require more weight than those boats will have to remove them. Therefore I am convinced that no boat can be constructed to be worked by men that will ever remove the description of obstructions last alluded to. I would therefore beg leave to recommend steamboats to be built, * * * to be so constructed as to apply the power of the engine to raising and *cutting out* the obstructions and for propelling the boats. This I believe to be the only mode of effecting the object agreeably to the views of the government. In the event of this plan being adopted, I would beg leave to submit a plan for such boats to your department."

In the letter of 22d October, 1827, (No. 7,) after giving an account of his operations, he refers to the subject of the foregoing extract, and says that since writing it, "I thought much on that subject, and have become altogether convinced that no other means will ever effect that object. I am also of the opinion that a boat may be so constructed as to effectually remove every description of obstructions from every part of the bed of the river for a much less sum of money than it can be done in any other manner, consequently it may be effected in much less time."

Under date of November 24, 1827, (No. 8,) he says: "I have succeeded something better with the machine boats than I expected when I first commenced operations with them. I am of the opinion that they are as well calculated for the work as they can be for boats to be worked by manual labor. Boats with steam power, with a similar machine, would be capable of executing the work at perhaps one-half the expense that it can be done by men. A steamboat can operate at any stage of water when the snags can be seen, which will be about eight months in the year, and would be capable of removing every description of obstruction from the bed of the river—many of which cannot be removed by any other means."

In reply, the chief engineer, under date of December 11, 1827, (p. 7, B,) said: "Your suggestion of the propriety of constructing steamboats for the removal of obstructions in the main channel of the river has been duly considered by the department, and although *little doubt is entertained of the superior efficiency of that kind of vessel in removing the impediments to the navigation, yet as these constructions will necessarily involve a very considerable expense, it is desirable* that the department should be furnished with an estimate of the expense of building one or more boats, as might be deemed necessary by you, before authorizing the same." The chief engineer then informs Capt. S. *that it is uncertain whether Congress will make the necessary appropriations; that in order to induce it, his estimates* must be made on the basis of the greatest economy. And in making estimates for the steamboats he must regard only strength and efficiency, as these only are necessary.

On January 7, 1828, the estimates were forwarded by Capt. S. On 9th June (No. 10) Capt. S. forwards certificates of pilots, &c., to the benefits arising from his last year's operations, and requests a decision on the subject of the proposed new boat.

The Secretary of War was anxious to avoid expense, and wished an ordinary steamboat to be bought, which could be sold when the work was done—that proposed by Shreve being on a model which rendered it only fit for a snag-boat. (See letter of chief engineer, June 27, 1828, p. 11, B.)

On July 1, 1828, (p. 12, B.) he was authorized to sell the small steamer previously used by him.

On July 13, 1828, (No. 11,) Shreve replies that the boat, to be efficient, must be constructed for the purpose. And on the 28th July, 1828, he forwarded the contracts for the construction, and certificates from various persons conversant with the subject, to show the necessity of building a steamboat expressly for the purpose of removing the obstructions.

The department had, in the letter of 27th June, given a conditional consent to the construction of the boat. And on the receipt of Shreve's letter of July 28, 1828, and the certificates enclosed, he was informed by letter of August 8, 1828, that measures would be taken to carry out the contract he had made. (B. p. 14.)

The boat was launched, and commenced operations in 1829, and was called the "Heliopolis," and the efficiency and value of the machine is abundantly proved. Several other boats have since been built. One in 1831, called the "Archimedes," two in 1836—one called the "Eradicator" and the other "H. M. Shreve"—all of which were put in use by the United States before Captain Shreve applied for a patent, which was not till the 6th July, 1836, and it was not granted till 12th September, 1838; and the first intimation that a demand was to be made against the government on account of it is found in the letter of Captain Shreve to General Totten, dated January 13, 1839. (A, p. 75.) The letter shows the necessity of another boat, to be used in the Arkansas river, and states that estimates are forwarded with it, which, he says, "will be very near the cost of the boat, exclusive of the patent-right for the boat, which I hope will not

be charged, as I anticipate selling the right of using the snag-boat to the government, and I shall be in Washington on that business in a few days."

Accordingly, he comes to Washington, and on the 14th February, 1839, he addresses a letter to General Totten (A, p. 78,) on the subject of his claim for inventing the snag-boat, which consists chiefly of a description of the machine, and grounds a claim on its utility to the government.

On 23d December, 1839, (ib., p. 102,) he asks the department to call on Congress to pay him for his patent-right, of which the United States had had the exclusive benefit for ten years. On 31st October, 1840, he repeats the request.

On the 21st December, 1841, he complains of his removal from his office, and that he had not been paid for the use of the snag-boats, in a letter to the Secretary of War. (See memorandum filed.)

The claim brought to the notice of the executive department was based on the assumption that Captain Shreve's property had been used by the United States, and that he had a legal demand against the government in virtue of the letters patent. On 1st May, 1834, he presented a petition, (see H. Rep. 383, 1st sess. 24th Cong.,) in which he puts his claim solely upon the ground of the benefits conferred on the government, and asked only to be allowed to enter eighteen sections of land at the minimum price, and the Committee on Public Lands, in "view of the general advantages derived and to be derived from the invention and use of the snag-boat, and in consideration of the valuable services of the inventor, who could not, situated as he was, being in the service of the United States when the boat was constructed, avail himself of the law granting to inventors of useful machines the exclusive right of using the same, recommend the passage of the act asked for.

The subject was again brought to the attention of the House in 1836, and this recommendation was renewed by the Committee on Public Lands. There have been, however, several favorable reports made since the patent was obtained, proceeding on the idea that it was enough to give Shreve a legal right to show the use by the United States of a machine invented by him, and for which he had obtained a patent, and they recommended the payment of various amounts of compensation, varying from $100,000 to $20,000, as struck their fancy, having no legal rule of compensation to go by.

Most of the boats were constructed by the inventor on his own showing of the necessity of such boats for the service he was employed and paid by the government to superintend and promote. There is no proof to sustain the allegation that he, at any time, protested against the use of these, or the construction of other similar vessels. Letters of 13th January, 14th February, and 23d December, 1839, 31st October, 1840, and 21st December 1841, so far from being remonstrances against the continued use of the boats already built, invite the government to build more, and that of the 13th January, which contains the first intimation to the department that he had patented the boat it had had in use for ten years, protests not against the further use of that boat and others in use, or against the building

of others, but protests, gently indeed, against any notice being taken of his patent; for whilst recommending the construction of a new boat on the model in the Patent Office, and furnishing an estimate of the cost, he tells the department that he does not include in either estimate any charge for the use of his patent-right in the boat, it being his intention to come on to Washington in a few days to sell the patent to government; in other words, to go to Congress with it. And in his subsequent letters to the department, he is urgent on the department to call on Congress in his behalf. At no time, not even when he was turned out of office, did he so much as request the executive officers to desist from using the vessels, much less undertake to stop them by legal proceedings, as he could have done if he had had a valid patent, and as it is unreasonable to suppose he would not have done, if he had been advised that he had the right to do so.

On the legal right of this claimant to recover, this court has passed in the case of Greer's administrator, and I shall not stop to repeat here the reasoning of the court. I shall present some considerations to show that the claim is devoid of merit in any aspect of it.

On the question whether the claim has merit, although not resting on any legal right, the reply of the chief engineer, General Totten, dated 18th January, 1842, to the interrogatories of the Hon. Edward Cross, chairman of the select committee appointed to consider the memorial of Captain Shreve, appears to me to be conclusive. It is strange that this letter is not referred to in the report of that gentleman at all, and was not printed as part of it. The letter is strictly responsive to the interrogatories which it was thought necessary to make of the department, and the facts stated by General Totten were not controverted in the report, and are verified by the evidence above referred to by me. I extract from the letter of General Totten the following statement:

"The first suggestion that was made to the Engineer department for the use of steamboats in removing obstructions from the western rivers is believed to have been made by one of its own officers, Major Delafield, then a lieutenant in the corps of engineers. The first suggestion made by Mr. Shreve for using steamboats, is believed to be contained in the letter to the department, dated October 1, 1827. Before making this suggestion, Mr. Shreve had witnessed the operations of Mr. Bruce, the contractor for removing the obstructions. He had also been engaged for some time on the work as the superintendent or government agent, and had operated with boats and machinery, of his own construction, propelled and worked by manual labor, called machine boats. He repeated the suggestion of employing steamboats and steam power for removing the obstructions, in his letters of October 22, 1827, November 24, 1827, January 7, 1828, June 9, 1828, and July 13, 1828. In these communications he spoke of the difficulty of managing the machine boats, propelled by manual labor, in the rapid current of the Mississippi. He represented the operations with these machine boats as tedious and difficult, and stated that with them it would be impracticable to remove many of the larger trees or snags which constituted the most dangerous class of obstructions. He gave it as his opinion, based upon his observations and experience in

conducting the operations, that the employment of steamboats was necessary. He stated, moreover, *that this opinion was concurred in by his assistants, and by all practical and experienced men engaged in or acquainted with the navigation of the western rivers.* Upon these representations the department approved of his plans, and left the details of construction principally to himself. There is nothing in the correspondence of the period here alluded to which shows that Mr. Shreve expected to receive from the government any compensation for the use of any machine or invention of his.

"The construction was at the cost of the United States. The superintendent was in the employ of the government, and was in the receipt of a stated and liberal salary. The boat and machinery were not only constructed, but their usefulness was fully tested at the expense of the government, and while the superintendent was receiving his regular salary.

"I have the honor to be, very respectfully, your obedient servant,

"JOS. G. TOTTEN,

"*Col. and Chief of Engineers.*"

The merit of the invention is not determined by its efficiency. There was more merit in Fulton's experiments, by which boats were propelled at the rate of four miles an hour, than there is in those since made, by which the magnificent steamers which now traverse the world are propelled at much greater speed; because the improvements by which these wonderful results have been produced, become obvious after the success of the first experiments. So, in this case, Capt. Shreve's *hand machines* were slight modifications of Bruce's. He himself reports the success of the operations with these machines, and furnishes certificates of steamboat men to show how great his success had been with them. But his experiments disclosed the obvious defect of insufficient power. Did he make use of any unknown means to supply this defect? Not at all. He only applied a power which was of universal application at the time, and about the propriety of the use of which, for the purpose, no one who had any agency or connexion with the subject at all doubted. Why, then, it may be asked, was it left to Shreve to propose it, or if others proposed it, why was it not adopted when offered by Delafield and Prentice in 1824, and not till urged by Shreve in 1828. The reason is shown in the correspondence above quoted, and in the history of the times. It was with extreme difficulty any, even the smallest, appropriation could be got for the purpose of improving the great rivers of the west, and this formed the only objection of the Engineer department to Shreve's proposition; the advantage of which, the chief engineer tells him, is obvious. From the tenor of the correspondence, it is probable that if the chief engineer had been assured that the improvement of these rivers was the settled policy of the government, he would have directed the use of steam from the first, and adopted Prentice's instead of Bruce's plan. But being uncertain on that point, and inclining rather to the impression that the appropriation was temporary, it was not advisable to expend so large a portion of the $75,000 appropriated on machinery; and it was not till the pas-

sage of the river and harbor bill on 23d May, 1828, (4 Stat., p. 288,) that the department was authorized to suppose that this policy would be continued; and Shreve, indeed, only recommended the plan on the contingency that this appropriation should be made. The order was given immediately after the passage of the act to build a steamboat expressly adapted to the purpose. Again, Shreve gave not only his own opinion in favor of this, but furnished numerous certificates of other steamboat men to the same effect, and assured the department that this was the universal opinion of men conversant with the navigation of the western rivers. There was no merit, therefore, in seeing that such a steamboat was wanted. Delafield, Prentice, and Bakewell had suggested a steamboat for pulling up and breaking off snags before the business was gone into at all, and the whole river community saw it, as Shreve informed the department, after witnessing the experiments with the hand machine boats and a small steamer. As regards the merits of the particular form adopted, every idea contained in it will be found distinctly conveyed in the suggestions of Delafield, Prentice, Bruce, and Bakewell, on merely *a priori* consideration—that is, before experimenting at all on the subject. What is called the "*snag-beam*" is but a plan for applying the force of the engine to breaking the logs, is substantially suggested by Delafield, who proposes to apply it by a *pull* through a chain attached to the snag instead of by a *push* with a piece of timber. The other essential ideas, viz: the twin boats, the application of steam to the windlasses, and applying these with the *momentum* of the vessel, are all specifically recommended in the plans of Delafield, Bruce, Prentice, and Bakewell, before either of them had made any experiments. Can any one doubt that the suggestion contained in Colonel Hughes's report, which is so much relied on by Shreve, is true; that the crude ideas contained in these plans would naturally lead to that adopted by Shreve. And when we see that Prentice foresaw that the recommendations of Bruce and Shreve for cutting off snags under water must necessarily fail, a plan which it appears by Shreve's letter of the 1st October, 1827, he believed in even after seeing the failure of Bruce, and that he recommended from the start the twin steamboat with windlasses to raise the snags *bodily* as the effective means, and when we see from Delafield's letter of 1839 that this was in fact the essential feature of the plan adopted, is it supposing too much to believe that Prentice would have perfected the machinery in quite as short a time as Shreve did in actual service, or that he might have made it yet more effective? It is said, indeed, that Shreve's machinery has not been improved upon. Colonel Long, in his report of 1848, maintains, on the contrary, that the boats constructed since Shreve's removal from office are improvements, and are much the most economical; and the tabular statements given by him would seem to leave no room to doubt the fact.

But it may also be observed that if Colonel Long was mistaken, and the assertion were true that there had been no improvement on Shreve's plans, this fact would afford but little evidence of the merit of the invention. Removing snags was discontinued under Captain Shreve's successor. It was a field which did not invite the competition of inventors, because the business was carried on by the govern-

ment alone, and was, from its nature, supposed to be a temporary business, as it has proved to be.

But whether the merit of this work was great or small, Captain Shreve was paid for it I have no disposition to depreciate, in the least, the ingenuity displayed by him in the contrivances used by him to accomplish the objects of his employment. It was because he was supposed to be so skilful that he was employed as an engineer. This contrivance, the evidence shows, was planned by him whilst in public service and in the receipt of a liberal compensation. If it had proved a failure, the time given to it by him would have been the loss of the government, and the whole expense of the construction (about $25,000, I believe,) would also have fallen on the government. It was a thing contrived only for the occasion, and good for nothing else, and if not good for that, it would have been a total loss.

Can one prefer a claim for compensation for inventing a contrivance designed and fitted only for accomplishment of the special objects for which a man is employed and paid, because the contrivance may be thought to have uncommon merit? If so, General Jackson would have a just claim, not only upon the gratitude of his country for the heroism displayed in the defence of New Orleans, but would have a large pecuniary claim for the contrivance used by him in its defence. The originality of Shreve's contrivance for pulling up snags out of the river falls far short of that by which Jackson fortified its banks against the approach of the British in 1815. Till then certainly no one had ever heard of making a breast-work of cotton bales.

The general, however, was paid to defend New Orleans, and never thought of making a claim for compensation for the ingenuity displayed by him to that end. If the contrivance in question was useful to the government for any other than the specific purpose for which Shreve was hired, there would be more reason in the claim; but as it is confessedly as much limited to that object as his first plan of cutting up the snags on the sand banks in the bed of the river at low water, I conceive of no reason why he should be paid for one plan more than the other; in other words, it does not seem to me to be at all important, as respects the claim for compensation, when the sole end and result of any piece of ingenuity is to further the work for which a man is employed, whether the ingenuity exerted applies mechanism or avails itself of natural means. In this case the whole object was to remove snags from the bed of the river, and the first thing to be considered was how they were to be got at. Shreve said we can remove nine-tenths of these obstructions by waiting till the water is low, and then going on the sand bars with axes and cutting them up and burning them; and he got at the balance of them by pulling them up by machinery which, with the means of the government, he adapted to the purpose. I can conceive no reason why, if he should be paid anything for the suggestion by which the one-tenth part of them were removed, he should not be paid for that by which the other nine-tenths were removed.

M. BLAIR.

IN THE COURT OF CLAIMS.

REPRESENTATIVES OF HENRY M. SHREVE *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON REARGUMENT.

Claim for the use of a patent by the government of an invention claimed to have been made by Henry M. Shreve, to whom a patent was issued on the 12th day of September, 1838, for a snag-boat.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

FIRST. That on the 24th of May, 1824, Congress appropriated $75,000 to improve the rivers Mississippi and Ohio, (4 U. S. L., 33,) which act contained, among other things, the following provision:

"The President is hereby authorized to take prompt and effectual measures for the removal of all the trees which may be fixed in the bed of said river; and for this purpose he is authorized to procure and provide in that way which in his discretion may be most eligible, the requisite water craft, machinery, implements, and force to raise all such trees, commonly called 'planters, sawyers, or snags,' as may be found in the current of the said rivers at the lowest stage of water, and to saw or cut them off as near as practicable to the bottom of the stream."

SECOND. The War Department, on the 1st of June, 1824, issued a public notice offering $1,000 for a model of a machine adapted to the removal of snags and sawyers from the bed of the Mississippi river—the premium to be awarded by a board of engineers to the proprietor of the best model that might be offered. (See Shreve's petition to Congress of May 1, 1834.)

The notice, first published in the National Intelligencer on the 5th of June, 1824, contains the following:

"A premium of one thousand dollars will be given to any person who shall present to this office, on or before the first day of November next, a plan, machine, or instrument, best calculated to remove the sawyers, planters, and snags in the Mississippi river, so as to render the navigation thereof free and safe; the plan, machine, or instrument, to be accompanied by such drawing, model, or description, as will enable the board of engineers clearly to comprehend the same, to which board they will be submitted for examination and approval, and upon being approved of, the premium will be awarded and paid."

THIRD. Under this advertisement, John Bruce, Thomas W. Bakewell, and David Prentice, made distinct communications describing machines which they affirmed would answer the purpose. Richard Delafield wrote the department a letter making certain suggestions. Shreve also wrote, dated July 7, 1824, suggesting that three years before he had invented a machine for sawing off snags under water, a model of which he was willing to send to the department. He deemed sawing and breaking off the only remedy for the existing evil. (See letters of Bruce, Prentice, Delafield, and Shreve.) Bakewell's plan was communicated by Prentice.

FOURTH. Bruce's plan was approved at the War Department, and a contract made with him, which looked to sawing off the snags and sawyers. (See his plan with drawing.)

FIFTH. Bruce's plan did not fulfil the expectations of the department, and his contract was annulled. This was done in consequence of the representations of Shreve, and the latter was thereupon employed by the government to engage in the work.

See General Macomb's letter of the 1st December, 1826, and also of the 9th April, 1827, printed in Shreve's address to the public, in which he says:

"From the condition in which you represent the preparations of Mr. Bruce for carrying on his contract, and the unfavorable opinion you express of his ability to execute the contract with the means possessed by him, and his ability in other respects to complete the contract within a reasonable time, if at all, it has been determined by the Secretary of War to declare the contract forfeited, of which you will advise Mr. Bruce, if in your vicinity, and if not, his proper agent. The enclosed is the copy of a letter which has this day been written to Mr. Bruce, and addressed to him at Louisville.

"The Secretary of War approves of your plan for removing obstructions in the Mississippi river, and has directed me to say to you, that you will take measures to carry into effect, as soon as practicable, the project presented in your letter before mentioned, (of the 20th of February, 1827.) You will make an estimate of the sums that will be required for effecting each object, as near as you can make such estimate, stating in detail the items of expenditure, and forward the same to this department to be submitted to the Secretary of War; and, at the same time, to state to what place you would desire the money to be sent, and at what particular period."

SIXTH. Shreve commenced operations, using the boats and instruments provided by Bruce, and was principally employed in cutting off snags, &c., at low water, on the bars and chutes, and raising such of them as could be drawn up with hand and horse power applied to a windlass and pulleys. (See Shreve's letter of the 20th February, 1827, of the 1st and 22d of October, and 24th November, 1827.)

SEVENTH. After progressing some time, Shreve notified the government that the power then used was expensive and insufficient, and suggested the employment of steam power, which had been previously recommended by Delafield, Prentice, and Bakewell, without specifying any particular kind of boat, or any peculiar manner of use.

In his letter of the 1st of October, 1827, after specifying existing difficulties, he says:

"I am convinced that no boat can be constructed, to be worked by men, that will ever remove the description of obstructions last alluded to. I would therefore beg leave to recommend steamboats to be built (provided Congress should make another appropriation for the improvement of the navigation of this river) to be so constructed as to apply the power of the engine to *raising* and *cutting* out the obstructions, and for propelling the boats. This I believe is the only mode of effecting the object agreeably to the views of the government. In

the event of this plan being adopted, I would beg leave to submit a plan for such boats to your department."

In his letter of the 22d of October, 1827, he says:

"In my letter to the department, dated the 1st instant, I mentioned the use of steamboats for removing obstructions to the navigation of the river, from the main channel in particular. Since that time I have thought much on the subject, and have become altogtheer convinced that no other means will ever effect the object.

"I am also of the opinion that a boat may be so constructed as to effectually remove every description of obstructions from every part of the bed of the river for a much less sum of money than it can be done in any other manner; consequently the object can be effected in much less time."

On the 24th of November, 1827, he repeats these suggestions.

EIGHTH. After these suggestions as to the necessity and value of steamboats for the purposes of removing obstructions, the department calls upon him for a specification and estimate of the expense of such a boat as he had suggested would answer the purpose, and he responds.

Under date of 11th December, 1827, General Macomb, in writing him, said:

"Your suggestion of the propriety of constructing steamboats for the removal of obstructions in the main channel of the river has been duly considered by the department, and although little doubt is entertained of the superior efficiency of that kind of vessels in removing the impediments to navigation, yet, as their construction will necessarily involve a very considerable expense, it is desirable that the department should be furnished with an estimate of the expense of building one or more boats, as might be deemed necessary by you, before authorizing the measure."

NINTH. Shreve, in pursuance of this letter, forwarded an estimate of the expense of constructing the boat he contemplated, and it does not appear that he included anything for his personal inventions, but left the government to believe that his estimate included all the expense it would incur in building such boat.

In his letter of the 7th of January, 1828, to the department, Shreve says:

"In compliance with your request, I herewith forward you an estimate for building one steamboat for removing obstructions to the navigation of the main channel of the Mississippi river, accompanied by an estimate for working said boat for eight months, together with 120 men for working on the sand bars, island chutes, and for working the four machine boats used last year, four months; also an estimate of the expense for working 300 men nine months, at cutting the timber from off the banks of the river."

TENTH. The department authorized Shreve to hire or purchase a boat if he could, but if not, to build one. (See General Macomb's letter of the 27th June, 1828.)

ELEVENTH. Shreve elected to build a boat for the United States, and entered into contracts for the work, which he forwarded to the department. (See Shreve's letter to the department of the 28th of July, 1828.)

TWELFTH. The following steam snag-boats were built by the United States under the direction of Shreve, at the dates mentioned:

Heliopolis, 1828–'9; Eradicator, 1836; Archimedes, 1837.

All of which were constructed and in use before the date of his application for a patent.

The Samson, Sevier, Hercules, and Shreve were not twin steamboats, and did not use the combinations claimed in his patent.

THIRTEENTH. From the 2d of January, 1827, to the 11th of September, 1841, Shreve was in the employ and was liberally paid by the government in the business of improving the navigation of the west-rivers.

Col. Long, in his report, (pp. 26, 27,) says:

"It appears that the memorialist (Shreve) was appointed superintendent of river improvements on the 2d of January, 1827, (it was in fact the 1st of December, 1826, and he probably accepted on this date,) and was allowed a compensation of six dollars per day from that time to July 3, 1832, and from this last date to the 11th of September, 1841, he was allowed a salary of $3,000 per year. Also, that the amount of his compensation, as based on these allowances made him for the entire period of his employment, was more than $39,500, which, together with the perquisites, privileges, and immunites accorded to him within the same period, has enabled him to realize an independency seldom, if ever, attained by public functionaries in the service of the United States. So liberal a compensation was never intended for a man or agent of ordinary capacity, but for one pre-eminent for his experience, knowledge, and judgment in relation to river operations, as also to all business transactions connected therewith; and it was reasonable to presume and expect that, during the period of his agency, his best efforts and talents in all respects were due and ought to have been devoted to the business of his appointment, in all its branches and relations, without any claim or title to extra compensation.

FOURTEENTH. If the United States were suable, Shreve could not recover for the use of his patented invention because of the following facts:

What the patent is for.

The claims are in these words—

1. "The invention claimed and desired to be secured by letters patent consists in the manner in which I have combined and connected the mechanical power of the windlass and pulley so as to co-operate with the momentum given to a twin steamboat, and with the continuous action of the paddle wheels, so as to break off, uproot, and raise snags and sawyers, as above set forth.

2. "I, however, particularly claim as new the application of the forward snag-beam (D) for the purpose of raising or breaking the snag or sawyer preparatory to its being lifted on board the boat by the apparatus constructed for that purpose.

3. "I also claim the manner of connecting together the two boats by means of the upper and lower tier of beams, diagonal braces, bulkhead, and forward beam, (D.)"

1. There is no such invention described in the specification as that claimed in the first of these three claims.

The windlass, the pulley, the momentum of the boat, and continuous action of the paddle wheels are not described in the specification as acting together, and they cannot possibly do so.

The windlass and paddle wheels can act together in raising snags. The pulley may act with them or perform a collateral function when these cease to act. The momentum of the boat is applied in cases where the attempt is to break off or loosen a snag, which may be by butting against or by pulling it. The continuous motion of the paddle wheels creates the momentum of the boat. There is no combination, such as claimed, either described or actually used in practice. This claim must fall for want of something to stand upon. Shreve having claimed what he did not invent or describe, his patent is void because he claimed too much, and because he claimed what was impossible.

2. There is no invention in either of the three things claimed.

A well informed engineer, if requested by his employer to set up a strong power to raise a heavy weight, would naturally resort to the pulley or lever, or both. He would use steam instead of hands wherever he could apply it.

If directed to fasten two boats together so as to work firmly together, he would naturally run beams across both; and if one tier would not give the necessary strength, he would make two.

If requested to prepare a strong fixture so as to enable a boat safely to strike against another object, he would naturally make a strong bulk-head or beam in the forward part of it, which would resist the opposing object without injury to the boat.

In case of twin boats, the obvious location of this subject of resistance would be between the boats, because it would there bear equally upon both. The size and substance of this subject of resistance would be determined by an engineer upon considering the object he wished to strike against.

A competent mechanical engineer, if told what was designed to be accomplished, would naturally resort to the means here mentioned. His knowledge of his business would suggest what Shreve used. Means which would occur to a good mechanical engineer in the course of business do not constitute invention, and therefore they are not patentable. If they are included in a patent they violate and render it void.

3. Shreve was not the first inventor of the things described and patented.

The twin boat was not new. The application of steam to produce motion or momentum of the boat was not new. The use of the windlass and pulleys was not new. The manner of using these and of the boat was not new.

The fastening of twin boats together was not new, nor was the construction of a part of a boat so strong and firm as to be able to stand when applying its momentum against another object new. Each had long been in use. Even the manner of applying the power of steam to the raising of snags was not new.

Delafield, on the 14th of July, 1824, wrote to the department and said:

"I would suggest the propriety of using a steamboat of sufficient power (to be readily procured at New Orleans) for this purpose. By attaching a hawser (hemp or chain) to the snag or planter and making it fast to the boat, and by applying the power either in the direction of the log or circularly, I conceive the most firmly placed tree may be either removed from its position to the deep water or broken off to such a depth as entirely to do away its ruinous effects. I believe the plan susceptible of being carried into effect, and at the minimum expense when compared with the various machines contrived for sawing under water."

Here is the plan of applying the momentum of the boat and of the paddle wheels to the breaking off and pulling out snags. Whether applied by butting the boat against them or by fastening a chain can make no difference, though the latter is the best mode for the safety of the boat itself. The mode of using things that previously existed cannot be the subject of a patent. This has been repeatedly held by the Supreme Court. The machines used, the boat and its motion, existed before, and all that Shreve did was to use them in a particular manner, which was not inventing a new thing. Delafield had called attention to the existence of this power, and to its application to this same purpose, and in a manner which was a perfect equivalent.

As early as the 8th of March, 1834, John B. Emerson described and included in a patent the application of steam power to the working of a capstan of a vessel. This was applying the motion of the paddle wheels for the same purpose that Shreve proposed to apply them. (See 6 How., 437; Hogg *vs.* Emerson, 14 How., p. 262. See also 14th vol. Journal Franklin Institute, p. 262.)

It thus appears that this part of Shreve's invention was patented four years before he obtained his patent, and it is, therefore, void.

Prentice, on the 10th of July, 1824, described to the department his plan of removing snags. He proposed "a double or twin steamboat," with outside wheels. He thus describes a part of what Shreve includes in his patent:

"Between the boats, and well supported on strong frames at each end, a strong windlass is to extend. This is intended to act on the snag, and must be of a strength equal to supporting forty or fifty tons. It must be furnished with a chain, and proper rings, hooks, &c., for grasping the snag. Motion may be given to it from the engine in various ways; but I would recommend the following method as being strong and easily repaired, which is an object of great consequence in the place where the service is wanted:

"On the end of the main windlass, let there be a large plain wheel fixed, say twenty or twenty-five feet diameter; the outside of this wheel to be so broad as to allow some six or eight turns of hawser to be coiled, of which one end would be made fast as on the barrel of a common crane. The other end of the hawser to lead to a lesser windlass in the same boat, which is to be capable of attachment to the engine at pleasure. The main windlass must be pretty high above

water to allow of a long pull at once. The boat and machinery being procured, the manner of using would be easy."

He suggests the following as one mode of using the boat and machinery:

"With large, upright, deeply fixed snags, the trouble would be greater; with them I would, after *heaving on them*, run the boat up and down, or across, so as to shake and loosen them; if once it yielded in the least, the continued shaking and heaving would bring it out. It is scarcely necessary to enter more into detail on the best way of using this implement. A man of common good sense would very soon discover how to make the most of it."

Here we have the twin steamboat, its momentum, and the windlass, applied to loosening and raising snags. It contains all that Shreve used, directly, except it applies the momentum of the boat through a chain instead of a butting-beam.

Bakewell's plan, of the same date, included the use of a steamboat with a stern wheel, and to be used as follows:

"Run up to the snag, make fast to it a very strong cable, and put the boat under full headway right across the stream. On the cable being brought to a stretch, the whole momentum of the heavy boat would be brought to bear on the snag with a force nothing could resist. The snag must be wholly or partly torn up, or broken at the bottom, or the cable must part. If the snag is partly torn up, a repetition of the pull will bring it out entirely."

Here we have, as the leading object, the momentum of the boat under the action of steam.

Bruce's plan was prepared for the War Department on the first of November, 1824.

It contemplated the use of twin boats and horse power. He looked to the use of four windlasses and four tackle blocks. The latter is the same thing as the pulley. (See Falconer's Marine Dictionary, p. 523.)

His machinery was in part for sawing off snags. He provided a windlass for raising them. He says:

"The mode of raising trees is to drive an iron bolt into the tree and then wind the rope two or three times round the tree and roll it over, and then the tongs to raise with the cross beam under the boats is to be slid out."

His meaning is rendered more clear in his reference to his drawings, where he says:

"b. A crab and tackle to elevate the sawyers.

"X. Sliding sills to support the sawyers.

"O. Windlass for hoisting sawyers, the tackle rope passing through a mortice in a post marked p."

From this, it is certain that he contemplated the use of the windlass and pulley in raising snags, which were to be brought upon certain sills between the boats. These two mechanical contrivances are clearly shown upon the drawing in connexion with the "crab," which was designed to grapple with the snags, and continue its hold until they were elevated to the sills prepared between the boats for their reception.

Here we have, in these several plans, the elements of all the contrivances used by Shreve, and the very combinations which he claims as far as he could use them together. Shreve describes nothing which has not been suggested by others long before him. His original plan was, like that of Bruce, designed mainly for cutting off snags. When that failed, he resorted to the use of the twin steamboat recommended by Prentice, and to the mode of use suggested by him and Delafield, and to the windlass and pulleys proposed by Prentice and Bruce. His mode of use of the boats was substantially that of Delafield, Prentice, Bruce, and Bakewell, when applied to breaking or loosening the snag, or raising it on or under the boat.

Shreve merely carried out the suggestions of these various individuals, and built a good boat, which was used in ways contemplated and explained by others before he commenced it. It follows that neither the thing constructed nor the manner of its use was new. Others had before proposed the same thing, and if Shreve had never heard of them, still he was not the *first* inventor, and therefore was not entitled to a patent; and the one granted is a mere nullity, and cannot form the basis of a claim for its use.

4. Shreeve's invention, if originally patentable, had been in public use for more than two years, with his consent, prior to his application, and therefore he was not entitled to letters patent,

The invention was in public use from 1828–'9 to 1838, some ten years, and with Shreve's consent, before he applied for a patent. His letters to the department show that he recommended the building of the boats, and asked permission of the department to build them, and asked and obtained funds from the government for that purpose as early as 1828. They also show that he entered into contracts with mechanics to build, and that they were built under his direct supervision and control. They also show, and he otherwise proves, that they were used in public, under his direction and by his assistants, for several years (about ten) before he applied for a patent. He claims and proves that all the twin snag-boats built by him were constructed like the first one, without any material alteration. Had these facts been disclosed to the Patent Office, a patent could not have been granted to him at all. Having been granted, it is null and void.

FIFTEENTH. It is a fair interpretation of the contract between Shreve and the government that the latter should have, in consideration of the compensation made him, the full advantage of his talents and genuis, so far as clearing obstructions out of the western rivers was concerned.

As early as the 7th of July, 1824, Shreve notified the government that he had contrived the means or mode of removing these obstructions, but which he did not specify.

Bruce sent the specification of a plan, which was adopted.

On the 1st of December, 1826, Shreve was appointed superintendent, in place of McKee, of these improvements, and entered upon its duties.

On the 20th February, 1827, Shreve made a report to the War Department showing that Bruce could not fulfil his contract, and, upon consideration of this report, the department annulled his contract,

and the whole business was thereafter conducted by Shreve in his own way, all his plans being assented to by the department. He continued in service down to 1841. He contrived machines and modes of their operations to accomplish the purposes of his employment, and presented them to the department for adoption. They were approved and constructed under his superintendence, without claiming anything at the time for anything he may have invented. This is a practical construction of his contract by both parties, showing that what he did was considered by both as falling within the line of his duty under the contract regulating his employment. If he had not considered that it was a part of his duty to contrive the best mode of accomplishing the object, he was bound to notify the government, and allow it to elect whether it would purchase his invention or to decline to use it. Not having done so, it seems clear that he considered what he did recommend the government to adopt was done in the line of and formed a part of his duty, and therefore the government was not bound to pay him anything extra.

These facts show that the government acquired the right to use, for its own benefit, the knowledge, talent, and genius of Shreeve during his employment, so far as they were directed to getting up plans, machines, and implements for removing snags, planters, and sawyers in the rivers where he was by his contract to act as superintendent.

This conclusion is strengthened by the fact, that for about ten years he had no patent, and until a year after it was granted he did not even suggest that he had any claim for the use of a patented or patentable invention; and even then he relied, not upon the fact of a violation of his rights, but upon the *liberality* of Congress.

In his petition to Congress, in 1834, he did not claim the invention which he patented in 1838. He said:

"Your petitioner respectfully represents, that he is the inventor of the steam snag-boats Heliopolis and Archimedes, the property of the United States, which are now and have been in the service of the government since 1829, under the direction of your petitioner as superintendent on the Mississippi and its waters. The invention has been attended with complete success; has answered all the hopes of the inventor, and fully met the anticipations of the government."

Here, the invention claimed was not the butting-beam, connecting beams, the pulley, windlass, and momentum of the boat, which are incidental to its use, but the boat itself, as a whole, which no one now pretends that he invented.

It is incontestable that the government, in assenting to Shreve's building these boats, had no expectation that he would have or make a claim for the use of any invention made by him. He gave no notice that he intended so make such a claim, nor did he intimate anything of the kind. He furnished an estimate of their cost, but included nothing for the value of his invention. This must estop him from making any such claim, which would be neither legal nor equitable. He was bound to disclose all to the government, and if he had made an invention which he thought it ought to use he should have said so, and enabled it to determine for itself whether it would obtain the ight to use it or not. By applying it on the government boats with-

out giving any intimation that he was using for them a patentable invention of his own, he precludes himself from now insisting that it was wrongfully used, or that, in good conscience, he ought to be paid for it. He was not misled by the government, but, on the contrary, he now claims that he misled it. If the government now pays him what is demanded, the expense of the improvement will be increased beyond its expectations based on his estimates by the amount awarded to him. This would be unjust.

Whatever he could do in furtherance of the enterprise in which the government was engaged, and the superintendence of which had been committed to him, he was bound to do for the compensation he received.

Engineers in the army, architects in the navy, and officers in both, in the discharge of their duties, often display quite as much talent, ingenuity, and invention as Shreve did in this case, in contriving the means of annoyance and defence, and in the use of those means, without ever imagining that they had a right to charge the government for whatever they projected or did that had not been projected or done before.

Adopt the principle upon which this case rests, the army and navy would present and be entitled to endless reclamations. Men of ingenuity would not only be paid a high price for their services, because of that qualification, but they would ask to be paid ten times over, because they exercised it under their contracts as contemplated when they were employed. Such a principle, carried into practice, would soon bankrupt the government.

SIXTEENTH. The proof is not that Shreve invented the things patented, but that he was considered the inventor of the "snag boat."

The claimant's witnesses swear, generally, not to facts, but to opinions, as to the invention, and never as to the particular things claimed in the patent. For instance, Moorehead is asked:

"2d question Who is the inventor or claimed to be the inventor of the *steam snag-boat?*

"Answer. Captain Henry M. Shreve was the inventor. I was with him most of the time he was making his drawings, and he told me his plans as long ago as two years previous to the construction of the first snag-boats which he superintended."

Here, the question and answer apply to the "steam stag-boat," and not to the things which were patented. No mention is made of those particular things.

Shallcross's deposition is to the same effect.

"Question 2. Who was the inventor or claimed to be the inventor of the *steam snag-boat?*

"Answer. Captain Henry M. Shreve was the inventor. I never heard any other claim to be the inventor."

This relates to the boat, and not to the things claimed in the patent.

Tellon's deposition is to the same effect.

"Question 2. Who was the inventor or claimed to be the inventor of the *steam snag-boat?*

"Answer. Captain Henry M. Shreve. I never heard of any one else making any claim to the invention."

Not a word about the claims patented, but the questions and answer apply exclusively to the steam snag-boat as a whole.

This witness, on being asked what part of the machinery used in the snag-boat he "ascribed" to Captain Shreve, he answered, "I ascribe *the whole of the machinery* to Captain Shreve."

If he had been asked what he "knew Captain Shreve invented," he probably would not have made such an answer. If he had, no one could believe it; because well known historical facts would prove it unequivocally false.

Sowers swears that "he has always considered Captain H. M. Shreve as the inventor of the *steam snag-boat* Heliopolis." But he clearly disproves that one of Shreeve's claims which relates to the motion of the paddle-wheels and the momentum of the boat. After stating the failure of Bruce's boats, and those first built by Shreve, he says:

"And then the said Sowers suggested to the said Shreve the propriety of bringing the *power of steam* to aid in the work. Said Shreve approved the suggestion and built the United States steam snag-boat Heliopolis, the said Sowers superintending the fitting of the said boat, and commanded her for some four years."

This statement not only disproves Shreve's special claim, but it shows that a part of what he included in his patent was the work of another mind, which had been communicated to him by one of his assistants.

SEVENTEENTH. The evidence relating to the successful operations in the western rivers, all refers to the action of the steam snag-boat, and not to the use of the things claimed by Shreve in his patent.

It is believed that there is not a deposition that places the success of the enterprise upon the use of the things included in Shreve's patent; but each of them refers to the use of the "steam snag-boat." It was the application of steam power, and not the invention claimed by Shreve, that rendered the enterprise successful.

EIGHTEENTH. There is no evidence that the steam snag-boat would not have proved successful without the use of the supposed inventions of Shreve.

The twin boat, the power of steam, and the windlass, pulley, and chain, are no part of the claim in his patent. All beyond these things lies in the use of them, which is not patented, and if it were, the patent would be void. Every object proposed could be accomplished by these means, and there is no evidence but what they would have been entirely successful. On the contrary, the whole tenor of the evidence is, as may be demonstrated on scientific principles, that these instrumentalities were amply competent to accomplish all the objects sought.

These agencies cover everything, unless it may be the snag-beam, which is inferior to the use of the long chain cable with the steamboat under rapid head way, which would act directly upon the snag, as would a weight upon the end of a lever. The snag-beam is liable in acting, to slide under the snag, and cause the bow of the boat to sink

down, and slide under it instead of acting directly upon it, like the chain cable. The latter is far more likely to break off the snag, and affords superior facilities for working it in various directions so as to loosen it at the roots when it does not break off, preparatory to being raised by the windlass.

LEGAL PROPOSITIONS.

1. The claimant cannot recover on the ground of contract, either express or implied, where there was no intention to make one.

There is no evidence whatever of any contract between the parties, nor of any intention to make one. In Shreve's letter of the 13th January, 1839, he expressed the hope (p. 76) that nothing would be included in the estimate for paying for the patent, as he anticipated selling the whole right to the government. Neither in his petition nor in his evidence does the claimant aver or prove a contract, either express or implied, concerning the use of his invention.

2. That no recovery can be had in this court on the ground of tort; but if there could be such recovery, there can be no tort when the party complaining of it voluntarily and of his own accord, and without request, performs the act set up as such tort.

The law establishing this court does not give it jurisdiction of cases arising in tort. If the government used Shreve's patent without his consent, it was a tort for which this court cannot award compensation.

But the evidence is conclusive, that whatever was done was by Shreve's consent, and by his own direct act, performed, not by order, but on his own motion, and therefore there was no tort.

3. A patent granted without authority of law is void, and cannot lay the foundation of a recovery.

The legal rights of patentees rest entirely upon the statutes of Congress. Unless the patent is granted pursuant to those statutes, it has nothing to rest upon, and is consequently without legal foundation, without which no recovery can be had. This is an elementary principle, and authority is hardly necessary to sustain it. (Pennock *vs.* Dialogue, 2 Peters, 17.)

4. A patent granted for a thing which has been in public use with the consent of the inventor before making application, is contrary to law and void.

The 7th section of the patent law of 1836 provides, that on filing an application, the commissioner shall examine, and if it should not, among other things, appear that the invention claimed "*had been in public use, or on sale, with the applicant's consent or allowance, prior to the application*, if the commissioner shall deem it to be sufficiently useful and important, it shall be his duty to grant a patent therefor."

Among the defences specified in the 15th section, is one in the words above italicized.

The application of Shreve for his patent was sworn to on the 30th of June, 1838, and the patent was granted on the 12th of September next thereafter.

According to his own showing, his invention had been in public use

from 1828–'29 up to the time of filing his petion, and with his consent and procurement. The thing patented had been in public use, that is, used in public, with his consent, some ten years before he applied to patent it. This vitiates the patent. (Pennock *vs.* Dialogue, 2 Pet. 1; Webster's Patent Cases, 530, 534; Carpenter *vs.* Smith, 9 Mess. & Wels.; Curtis on Patents, § 52 and seq.)

5. An invention made by a party when he was employed by another party for the express purpose of making it, is not patentable by the inventor as against his employer.

In such case, the invention can hardly be said to be that of the employed agent. Goodyear experimented with the hands of others. In the present case, the government wished to remove the obstructions from certain rivers. It employed, first, Bruce, whose scheme failed, and then Shreve. It had a clear right to his talents, as directed to the particular business in hand. Whatever he contrived, to further that business was within his employment. The government told him what it wished done, and left him to select or hit upon the means by which he would accomplish it. Shreve bore the same relation to the government as engineers employed in the army and navy, where the government orders a fort or a ship to be constructed, and leaves to them the selection of the means to be used in doing so.

In preparing the drawings for the first boat, Shreve had the aid and assistance of Sowers, who was a government engineer, and undoubtedly, the time and materials spent belonged to the government, because supplied at its expense. When completed, he informed the government, not that he had made an invention, but that he had contrived, as superintendent, for its use, such a machine as would meet its expectations. The government adopted his plan and furnished him money and assistants to carry it into effect. As he predicted, it was more successful than Bruce's plan, and more so than his own first contrivance. In all this, he gave the government the benefit of his faculties according to the understanding of the parties. It cannot be pretended that the government would have employed him, if it had been told it would not have the advantage to be derived from his knowledge, talents, and the devotion of his time. All that he did was within the meaning and intention of the parties at the time he entered the service of the government, and it cannot lay the foundation of a just claim.

6. That a patentee cannot recover for the use of machines or things patented by him, which were lawfully constructed before the grant of the patent, whether used before or afterwards.

At the time the boats were built, it was lawful for the government and everybody to use the invention, because Shreve had secured no special right to it. This continued so down to the 12th of September, 1838, when he obtained his patent. What was thus lawfully constructed could be lawfully used. The patent could not take away that right, and make illegal that which had been and was lawful. This would be depriving one of legal rights without his consent, and transferring them to another, which the law will not permit.

This precise case is provided for by the 7th section of the act of 1839, which says:

"That every person or corporation who has or shall have purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and to vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public, *or* that such purchase, sale, or prior use has been for *more than two years* prior to such application for a patent."

Here was both abandonment and prior use for more than two years before the application, and hence it is clear, that the government had the right to continue to use the specific machines or things which it had on the 30th of June, 1838, when Shreve completed his application for his patent. As the government had the lawful right to use these machines, no legal right accrued in Shreve's favor on account of his patent.

7. If the invention was by Shreve, and the patent valid, it could apply only to *twin* stoamboats.

The whole of the invention claimed by Shreve applies to *twin* steamboats and not single boats. He claims:

1. Connecting together two boats by means of two tier of beams and braces. This can only apply to twin boats.

2. The snag-beam, extending from one boat to the other. This can only be used upon a twin boat.

3. The use of the power of the windlass and pulley, "so as to cooperate with the momentum given to a *twin* steamboat with the continuous motion of the paddle-wheels."

Here he specifies the *twin* steamboat, and therefore it cannot apply to others. It follows. that all the other boats which were built, being single boats, they could not and did not use his invention as patented. The single boats were, some of them at least, built after the patent, but as they were not within it, no claim can arise on accout of such after building and use.

Under no view in which this case has been presented can the claimant recover.

R. H. GILLET, *Solicitor.*

JULY 21, 1858.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

LYDIA SHREVE et al. *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

On the 24th of May, 1824, by act of that date, (4. U. S. L., 33,) Congress appropriated $75,000 "to improve the navigation of the Ohio and Mississippi rivers;" and the second section of the act authorized

the President "to take prompt and effectual measures for the removal of all trees which may be fixed in the bed of said river;" and by the third section of the act the President was requested "to cause to be laid before Congress, as soon as convenience will permit after the commencement of each session, a statement of the proceedings under this act, that Congress may be enabled to adopt such further measures as may from time to time be necessary under existing circumstances." The importance of the subject of this legislation is shown by the foot-note of the act in Brightley's Digest, which exhibits the continuous appropriations made for the object till 1844.

Under the act of May 24, 1824, and on the 1st of June of that year, the War Department issued a public notice, offering a premium of one thousand dollars to "any person who shall present to this office, on or before the 1st day of November next, the plan, machine, or instrument best calculated to remove the sawyers, planters, and snags in the Mississippi river, so as to render the navigation thereof free and safe."

Under this advertisement Mr. Shreve addressed a letter to the Engineer department, dated Louisville, July 27, 1824, in which he suggested as the most practicable mode of effecting the object that of sawing off the snags, &c., six or eight feet below the surface of the water at its lowest stage; and he stated: "About three years ago I invented a machine for the purpose of sawing off snags, &c., under water, a model of which I will submit to the inspection of your department, if desired."

Communications were made by others, viz: Major S. H. Long, John Bruce, Thomas W. Bakeman, and David Prentice, describing machines they had invented for the purpose. Of these Mr. Bruce's plan was approved, and adopted by the government, and on the 12th day of October, 1824, a contract was entered into with him for the execution of the work proposed. To the superintendence of this contract Major Samuel C. Babcock was first appointed, and then Major Long, of the engineer corps. The services of the latter being required elsewhere, Colonel Samuel McKee was appointed superintendent May 19, 1826. (Exhibit No. 3.) On December 1, 1826, Captain H. M. Shreve was appointed superintendent, and in his letter of instructions from the Engineer department, he was informed that the results of Mr. Bruce's operations had not been satisfactory, and he was requested to report from time to time the adequacy of the means employed by and at the disposal of the contractor, the manner and effect of their application to the execution of the contract, and whether the results are calculated to sustain the conditions above alluded to." (Exhibit No. 3)

On the 20th of February, 1827, Mr. Shreve made his report to the Secretary of War, stating his opinion of the means used by Mr. Bruce, of their insufficiency for the Mississippi river, and the inability of Mr. Bruce to perform his contract according to its terms; and stating also, with much particularity, the state and nature of the obstructions in the rivers, and his own views and plans for their removal. (Exhibit No. 4.) On the 9th of April, 1827, the Engineer department acknowledge the receipt of Mr. Shreve's letter of the 20th of

February, 1827, and on his representation of Mr. Bruce's probable inability to perform his contract, they instruct him to inform Mr. Bruce that his contract is forfeited; and they say: "The Secretary of War approves of your plan of removing obstructions in the Mississippi river, and has directed me to say to you that you will take measures to carry into effect, as soon as practicable, the project presented in your letter before mentioned."

On the 1st of October, 1827, Mr. Shreve, in a letter to the Engineer department, states his progress in the work assigned to him, and complains of and describes the insufficiency of the means and apparatus employed, (Exhibit No. 5,) and states his belief that no boat can be constructed, "to be worked by men, that will ever remove the description of obstructions last alluded to. I would therefore beg leave to recommend steamboats to be built, (provided Congress should make another appropriation for the improvement of the navigation of the river,) to be so constructed as to apply the power of the engine to raising and cutting out the obstructions and for propelling the boats. This I believe to be the only mode of effecting the object agreeably to the views of the government. In the event of this plan being adopted, I would beg leave to submit a plan for such boats to your department." (Exhibit No. 6.) And in other letters, dated October 22, 1827, and November 24, 1827, addres ed to the Engineer department, Mr. Shreve reiterated these views and propositions. (Exhibits Nos. 7 and 8.)

In a letter addressed to Mr. Shreve December 11, 1827, the Engineer department answer his letter of November 24, and say: "Your suggestion of the propriety of constructing steamboats for the removal of obstructions in the main channel of the river has been duly considered by the department, and although little doubt is entertained of the superior efficiency of that kind of vessel in removing the impediments to the navigation, yet, as their construction will necessarily involve a very considerable expense, it is desirable that the department should be furnished with an estimate of the expenses of building one or more boats, as might be deemed necessary by you, before authorizing the measure."

"In making your estimate of the expense of constructing steamboats or other vessels, the greatest regard should be paid to economy. Strength and efficiency are the great objects to be obtained, and these only are necessary." (Exhibit No. 9.)

On the 7th of January, 1828, Mr. Shreve wrote to the Engineer department as follows:

"CINCINNATI, OHIO.

"SIR: In compliance with your request, I herewith forward an estimate for building one steamboat for removing obstructions from the main channel of the Mississippi river, accompanied by an estimate for working said boat eight months." * * * "The estimate for building the steamboat has been calculated for building at this place, which will be near the actual cost if built here of the best and most desirable materials." (Exhibit No. 10.)

On the 24th January, 1828, the Engineer department wrote to Mr. Shreve as follows:

"SIR: Your letters, dated the 1st and 7th instant * * the latter, enclosing estimates for building a steamboat for improving the bed of the Mississippi river, and for cutting timber off the banks have been received. Your estimates have been communicated to Congress, with other documents relating to the improvements of the Ohio and Mississippi rivers; but no measures can be taken by this department before the decision shall be made on the subject by Congress, who have it now under consideration." (Exhibit No. 11.)

On the 9th of January, 1828, Mr. Shreve wrote to the department, requesting to be informed, as early as possible, of the decision that should be made on his estimates and proposition; and that, if he should be authorized to build the steamboat, funds ($10,000) should be deposited to his credit in the Branch Bank of the United States at Louisville." (Exhibit No. 12.)

On the 27th of January, 1828, the Engineer department wrote to Mr. Shreve that his letter of the 9th instant "had been submitted to the Secretary of War, with the previous ones on the subject of building a steamboat to be used in improving the navigation of the Mississippi river. It states: "The Secretary approves of the use of a steamboat for the purpose, but to avoid the heavy expense of constructing one, which would probably be of little use after having performed the contemplated service, it will be preferable to hire a boat, if a suitable one can be obtained in that manner, or else to purchase one, which could probably be effected, not only with less delay, but at less cost than the construction would require. To avoid unnecessary delay, however, in case it should be absolutely necessary to build, a requisition has been made for $10,000, to be deposited to your credit in the Bank of the United States at Louisville, which sum, if not required for obtaining a steamboat, will be applied by you, at the proper season, to the prosecution of the works under your charge." (Exhibit No. 13)

On the 13th July, 1828, Mr. Shreve answered the last letter from the department, and stated that to hire or purchase a boat suitable for the contemplated service was impracticable, and that therefore one must be built, and proposing to send in a few days copies of the contracts for boat, engine, &c.

On the 8th of August, 1828, the Engineer department wrote to Mr. Shreve as follows:

"SIR: Your letter dated the 28th ultimo, enclosing three contracts for building steamboat, making the engine, and for making boilers, with certificates as to the necessity of building a steamboat expressly for the purpose of your superintending, and of the manner in which you have operated on the Mississippi, has been received.

"Your request to have deposits made to your credit in the Branch Bank at Cincinnati, Ohio, and Louisville, Kentucky, at stated periods shall be attended to. Requisitions have been made this day for $1,000, to be deposited to your credit in the branch of the United States

Bank in Cincinnati, and for $5,500, to be deposited in the Branch Bank at Louisville, Kentucky." (Exhibit No. 15.)

The first twin steamboat was commenced in 1828, and completely finished in August, 1829; and her first use is thus described in Mr. Shreve's report to the Engineer department:

"MOUTH OF WHITE RIVER, ARKANSAS TERRITORY,
"*August* 25, 1829.

"SIR: I have the honor to inform you that I have made some successful experiments with the United States steam snag-boat Heliopolis. I got underway from Trinity, Illinois, on the 19th instant, and proceeded down to Plum point, (the most dangerous place on the Mississippi river,) where I arrived on the 20th, at 12 m. There I made the first attempt to remove snags with the boat, and am proud to say that her performance exceeded my most sanguine expectations. In eleven hours that whole forest of formidable snags, so long the terror of the boatmen, (many of which were six feet in diameter,) were effectually removed. All of them were broken off several feet below the sand in the bottom of the river." (Newspaper.)

The full success of Capt. Shreve's invention was stated to the War Department in the official report of Capt. Delafield, made in 1830, (Ex. Doc. No. 9, sess. 1830–'31, and Exhibit No. 15*b*;) and in 1832, by the orders of government, another boat, the Archimedes, was built and brought into use, and, under the superintendence of Capt. Shreve, the improvement of the western rivers was greatly accelerated.

In 1834 Capt. Shreve presented to Congress his petition, dated May 1, 1834, in which, after stating the utility of his invention, and the results attained and to be expected from it, he said: "Your petitioner further states, that had his invention been of a nature to be applied to private interests or to individual pursuits, he could have made it the means of independence and wealth. Had it been of that character he could, under the constitution and laws of the country, have secured to himself the exclusive benefit thereof; but its nature is such as to preclude the employment of it in any other than national improvements. He therefore appeals to the justice of Congress for reasonable and adequate compensation for his invention, from which he can, under existing circumstances, derive no personal advantage, but which must be beneficial to his country for ages to come. He does not ask for money. He asks only the privilege of locating twenty-five thousand acres of land, which may be reclaimed by the removal of the Red river raft, at the government price, (one dollar and a quarter per acre,) payment for which to be made within one year after the lands referred to shall have been surveyed under the authority of government." (Exhibit No. 15.)

The petition of Capt. Shreve was referred, in the House of Representatives, to the Committee on Public Lands, whose report (House of Reps., 23d Congress 1st session, Rep. No. 509) recommended the passage of an act "granting to the petitioner the right of pre-emption to eighteen sections of the public lands lying on the line of the aforesaid raft on Red river." And in the year 1836, on the reference of

the petition to the Committee on Public Lands, they confirmed and adopted the report of 1834, but no grant was made by Congress.

On the 6th July, 1836, Mr. Shreve applied for letters patent for his invention. (Exhibit No. 17.) His oath as inventor was taken on the the 30th day of June, 1838, and the letters patent issued to him on the 12th day of September, 1838. (Exhibit No. 17.)

On the 13th January, 1839, Mr. Shreve wrote to the Engineer department in relation to another boat proposed to be built for the Arkansas river, and said: "The accompanying estimate is as much in detail as it can be made out, and will be very near the cost of the boat and machinery, exclusive of the patent right for the boat, which I hope will not be charged, as I anticipate selling the right of using the snag-boat to government, and shall be in Washington on that business in a few days." On February 14, 1839, he again wrote to the Engineer department in reference to his "claim for the invention of the snag-boat, and its usefulness to the government, &c." And on the 23d December, 1839, when transmitting his official report to the Engineer department, he says: "I must beg leave to suggest to the department the propriety of calling on Congress for an appropriation, to be made at the present session, to pay me for a compensation for the patent right to the snag-boat. The right has been vested in me by the laws of Congress, and does unquestionably belong to me as the inventor of that important and valuable machine, of which the United States has had the exclusive benefit for ten years." And in reporting to the Engineer department on October 31, 1840, he says: "I must beg leave respectfully to call the attention of the department to my claim for the invention of the snag-boat, which has been patented to me on the 12th September, 1838, investing in me the exclusive privilege of the use of that invention, which is sanctioned by the Constitution and conformable to the laws of Congress. I therefore see no reason why I should not be paid a fair compensation for the use of that machine by the government. I therefore hope that some provision will be made at the approaching session of Congress to do me justice, which is all I ask." (Exhibit A.)

In 1841, on the 11th September, the Engineer department informed Mr. Shreve of his removal from his office of superintendent, and of the appointment of Mr. John H. Russell in his place, and the letter states: "In concluding this communication, which finally dissolves your connexion with the government as an agent of this department, I take the occasion to say that the zeal you have manifested for the public interests, the ability you have displayed in conducting your operations, and the faithful manner in which, for a series of years, you have executed the various and important trusts committed to your charge, entitles your conduct, (so far as known to the department,) not only to an avowal of satisfaction, but also to an expression of high approbation." (Exhibit No. 16.)

In 1841 Mr. Shreve presented a memorial to Congress, in which he set forth his invention, its utility, and the services he had performed, and claimed compensation for his invention, and for the use by the United States of his invention both before and after the issuing of the letters patent, and proposed, for the sum of one hundred thousand

dollars, to "make a full and perfect deed for the whole United States of the whole of his valuable patent to the United States," and to "give a general release of all demands of every name and nature;" and in conclusion he said: "But if the United States will not purchase this exceedingly profitable invention, he will be under the necessity of ceasing to allow them to use his property any longer." (Exhibit No. 18.) This memorial was referred to a select committee December 23, 1841; and the action of Congress thereon, from its presentment to February 28, 1846, is shown in Exhibit 19; and the action of Congress on the memorial of the executors of H. M. Shreve is shown in Exhibit No. 20.

The report of the select committee, (House of Reps. report No. 538, 28th Congress, 1st session, Exhibit No. 19, p. 32,) states as follows: "The great value of the invention seems to be established as conclusively as any fact can be by human testimony. The great benefits to the government and country resulting from its use are manifest. A general view of them may be obtained from a brief summary:

"1. Red river was blocked up by a compact mass of drift wood 160 miles in extent, called the "Great Raft," consisting of huge logs for centuries imbedded together, and covered with living trees, which not only prevented navigation, but caused the overflow of a large body of the best lands in the world, to the right and the left, for a considerable distance of the river. To remove this raft by any means known before this invention was a hopeless undertaking. With its aid the whole raft was removed and destroyed, the river restored to its original bed, hundreds of thousands of acres of land drained and made valuable, and many hundred miles of navigation opened to steamboats from the Mississippi.

"2. By the removal of snags in the great western rivers generally the dangers of navigation to life and property have been incalculably diminished, and the time occupied in performing voyages between the interior cities and New Orleans reduced about one half. Hence results a saving of life, of property, of time, and of freights, increasing the value of produce throughout the entire west, and enhancing the value of lands, public and private, beyond calculation.

"3. It is in evidence, from the annual report of the Secretary of War, 1840, that the removal of the Great raft caused a saving every year in the transportation of the supplies for the troops at Fort Towson of $85,000; and the snag-boat, by the removal of obstructions, has saved and will save to the government immense sums in transportation, not only on that, but the other great western waters." These statements are supported by the evidence in the case, a part of which consists of official reports of engineer officers of the United States, many of which are referred to in the brief of the petitioner, and extracts made from them.

By the report of the Engineer department, dated January 6, 1836, it appears, "as regards the compensation for these services, when first appointed, he (Captain Shreve) was allowed six dollars per day from the date of his acceptance, which was on the 2d of January, 1827. On the 28th of October he was allowed, in addition, two and a half per cent. on the amount disbursed by him, not to exceed two

dollars per day, and this continued till the act approved July 3, 1832, fixing his compensation, including *all charges* for his services, at $3,000." This act provided expressly that the superintendent should not hereafter be allowed anything in the shape of commissions for disbursements.

The amount disbursed by Captain Shreve during the time he was allowed a compensation for that service being sufficient to give him two dollars per day, his compensation from the 28th of October, 1831, to the 3d of July, 1832, was eight dollars per day.

The act of 1832 thus increased Captain Shreve's compensation eighty dollars a year. It added to his duties the great labor of improving the Arkansas river and of making the disbursements therefor. (Exhibit No. 2.)

In the year 1843, two boats, the Sampson and the Sevier, were built by the government; and in 1852 and 1853 five other boats were constructed, viz., the Thomas H. Benton, the Hercules, the Bell, the Sevier, and the Terror, all of which were twin hulled snag-boats, using the invention of Mr. Shreve, patented as aforesaid. (Exhibit No. 28.)

Mr. Shreve has died, and the petitioners, executors of his will, proved in the county of St. Louis, in the State of Missouri, on third day of April, 1851, bring this claim against the United States, averring in the petition to this court, "That the whole term for which the exclusive right to use and vend said invention has expired, and neither said Shreve in his lifetime, nor your petitioners since his death, have received any benefit from said letters patent; but, on the contrary, that the United States, in violation of the Constitution of the United States, as well as of the law to secure the rights of inventors, and against the protest of said Shreve, have used the aforesaid invention during the whole period for which said letters were granted, and thereby secured to themselves advantages which are almost incalculable in amount, and have received the whole benefit and advantage thereof, and for which the United States are bound in law to pay."

And the petitioners claim for the use by the United States of the invention of Captain Shreve, both before and after the issuing of the letters patent, the sum of two hundred thousand dollars.

And the question is, whether the facts stated establish a contract or obligation on the part of the United States to pay Captain Shreve any and what sum for the use of the alleged invention.

1st. For the time prior to the issuing of the letters patent.

2d. For the time subsequent to the issuing of the letters patent.

As to the claim for the use of the invention prior to the application for the letters patent, it is enough to say, that an unpatented invention is not property, nor the subject of exclusive ownership, but is free to the use of all persons, in whatever way they may come to the knowledge of it. An invention is made property only by and according to the statute; and the policy of the statute, which limits the inventor's exclusive rights to fourteen years, excludes all such rights prior to the application for the patent.

It is objected on the part of the United States to the claims of the

petitioners for the use of the invention after the application for the patent—

1st. That the infringement of a patent is a tort, and that this court has no jurisdiction over the case. By the statute the remedy for an infringement is an action on the case; but an infringement of a patent is a cause of action at the common law, and there the party injured may waive the tort and sue in assumpsit on the implied contract for the use of his property, as well as if it were lands or chattels. Besides, if the patent is valid, the United States, by the act of Congress of 1852, and the five boats built under it, have taken Mr. Shreve's property for public use, and a promise to pay for it arises on the Constitution and makes a contract.

2d. It is objected that Mr. Shreve was not the inventor of the machine patented. The evidence before us and the exposition of the invention by the skilful experts of the Patent Office, establish, in our opinion, the originality of the invention and the title of Mr. Shreve, and they show a useful effect attained by new means. The mechanical result is precisely stated by Mr. Keller, thus: "With the twin-boat and windlass, Captain Shreve has combined various contrivances by which he is enabled to concentrate on a snag the power of the windlass, the momentum of the whole mass of the boat, and the power of the engines, communicated through the paddle-wheels."

3d. It is objected that at the time of the invention Mr. Shreve was in the service of the United States, and that "it is a fair construction of the contract that the United States should have the full advantage of his talents and genius so far as clearing obstructions out of the western rivers."

The terms of the contract admit of no such extension. Mr. Shreve was in the service of the United States and was bound to make the best use he could of the means furnished by the United States, but he was not bound to furnish means to them, and he was no more bound to render to them his inventions than he was all his real and personal property.

The claim of the petitioners for the use of the invention after the application the patent, applies to different subjects, to which pertain different considerations.

First, as to the use of the invention by the United States after the application for the patent of the boats built *before* such application:

The Heliopolis and Archimedes were built by Captain Shreve for and at the cost of the United States, and thus his invention was by him wrought into their property, and they were thereafter free to use and vend those specific boats as a consequence of their right of property in them; and by the rules and decisions of the patent law, Capt. Shreve's procedure was a license to use the invention in those specific boats (1 How., 202, McClurg *vs.* Kingsland) when they were built. And such license was affirmed by the 7th section of the statute of 1839, which enacts "that every person or corporation who *has* or shall have purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and to vend to others to be used, the specific machine,

manufacture, or composition of matter so made or purchased, without liability therefor to the inventor or any other person interested in such invention."

Secondly. As to the use of the invention by the United States *after* the application for the patent—*i. e.*, in all the twin hulled boats except the Heliopolis and Archimedes.

To the claim of Mr. Shreve on this account, it is objected on the part of the United States that he had abandoned his invention to the public use before his application for a patent, and we think that this objection is sustained by the evidence in the case. The facts are, that when, in 1828, Mr. Shreve proposed to build his twin-hulled boat for and at the cost of the United States, he was called on for estimates; he furnished these estimates, and there is no evidence, nor is it claimed, that they included anything for the use of his invention then or when he built the Archimedes in 1832. Then the invention was brought into practical operation August 20, 1829, and its use in public continued until September 1836, when he applied for letters patent; so that thus there was a use in public of seven years before any claim of exclusive rights was made.

Such a use in public is much more than enough to avoid letters patent under the rules and decisions and statutes of the patent law. In the case of McClurg *vs.* Kingsland the court below had charged the jury that the facts proved a license to the defendants. On error to the Supreme Court of the United States, (1 How., 208,) they say in reference to the statute of 1836, (under which Captain Shreve's patent was granted,) "the defendants used the invention of Harley *for four months* before his application for a patent; the use was public, and not only with his consent and allowance, but he himself made the rollers on the plan he invented during those months, from the time when he had ascertained the utility of his invention."

"It would, therefore, be no strained if not the fair construction of the act, if, under such and the other circumstances in evidence in the cause, the court had charged the jury, that if they believed the witnesses, the patent subsequently obtained was void." And the court had previously said that, under the acts of 1793 and 1800, "Harley's patent would have been void on the evidence in the case." If a patent may be avoided upon a previous use in public for *four months*, it certainly must be avoided on proof of such use in public, with the assent and co-operation of the inventor, for seven years.

Then the seventh section of the act of 1839, which on the authority of McClurg *vs.* Kingsland, is applicable to this case,) in relation to such prior use, declares: "No patent shall be held invalid by reason of such purchase, sale, or use prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale, or use has been for more than two years prior to such application for a patent."

This statute gives to inventors the privilege of a prior use for two years; but it thereby limits such use to two years, and precludes a public use for seven years. Thus the statute of 1839, of its own force, avoids this patent.

But the case furnishes other evidence of the abandonment of the

invention than the prior public use for seven years. In 1834, Captain Shreve presented a memorial to Congress, dated May 1st in that year, in which he says: "Your petitioner further states, that had his invention been of a nature to be applied to private interests or to individual pursuits, he could have made it the means of independence and wealth. Had it been of that character, he could, under the constitution and laws of the country, have secured to himself the exclusive benefit thereof; but its nature is such as to preclude the employment of it in any other than national improvements. He, therefore, appeals to the justice of Congress for reasonable and adequate compensation for his invention, from which he can, under existing circumstances, derive no personal advantage."

Now, taking into consideration the fact that the invention was not marketable; that nobody had used or could use it but the United States; that they were not suable, so that against them the statute would furnish no remedy for the infringement of the property it would create, and the patent would be inefficient; and we think, that Mr. Shreve, in the language quoted, declared the purpose not to take our letters patent, and not seek an exclusive property in his invention his memorial presents as alternatives a patent right available in courts of law and the consideration of the legislature for his services; and he elects to rely on the latter and to abandon the former. He asks, indeed, for compensation, but he waives and disclaims the statute protection of a patent, and this disclaimer is in terms absolute and not conditional, and made then, was irrevocable thereafter. Moreover, it connects itself with the public use and construes that, and the case then exhibits a use in public for seven years, coupled with an express disclaimer of a patent, deliberately made and promulgated. This must necessarily avoid letters patent subsequently obtained.

It was claimed that the United States were precluded by these letters patent from giving in evidence or availing themselves of a public use prior to the application for a patent; but we think this is not so. The letters patent give but a prima facie title; the procedure of the Patent Office is ex parte and upon the matter before and within the knowledge of that department, and it is not to be held to know the transactions of an applicant with other departments of the governmen. The Commissioner of Patents and his corps of examiners are not a judicial tribunal, and letters patent issue subject to all legal objections that may be brought against them. And by the statute in the action of the Patent Office upon the particular matter of prior use is rested on the declaration prescribed for the applicant for the patent.

A claim was made at the hearing for the use of the invention in single-hulled boats; but these are clearly not within the patent; for the specification would not enable any one to make a single-hulled boat, nor to place upon it the beam D, the windlass, or gearing, or frame of timbers. Single hulled boats are not mentioned in the specification; and the patent says of the machine invented, "it consists of a double or twin boat." Besides, if single-hulled boats were within the patent, they would be also within the evidence and objections of public use prior to the application for a patent.

On the whole case, we find that Henry M. Shreve was the inventor of the machine patented; that the machine was of great utility to the United States; that Mr. Shreve has never received any compensation therefor; that the evidence fails to establish any contract or obligation on the part of the United States to pay for their use of the invention; and that therefore the petitioners are not legally entitled to the relief they pray for.

S. CALVERT FORD.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

S. CALVERT FORD *vs.* THE UNITED STATES.

1. The petition of claimant.
2. Original evidence exhibited in the case by claimant, transmitted to the House of Representatives.
3. Evidence offered by the United States.
4. Claimant's brief.
5. United States solicitor's brief.
6. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

S. CALVERT FORD *vs.* THE UNITED STATES.

To the honorable the Court of Claims:

The petition of S. Calvert Ford, of the city of Washington, D. C., respectfully represents:

That he was a sutler of the army of the United States at Carlisle barracks, Pennsylvania, from July, 1838, until November, 1845; that in the course of the years 1839, 1840, and 1841, detachments of troops or enlisted men were ordered from said post (Carlisle) to Fort Wayne and

Fort Gibson, west of the Mississippi river; that many of the men comprising said detachments were, when ordered away as aforesaid, indebted to the petitioner in various sums, amounting in the aggregate, to two thousand one hundred and fifty-six dollars and eighty cents, ($2,156 80,) a fraction, perhaps, more or less, as appears from the books of the petitioner, and also the descriptive rolls of said detachments of troops on file in the office of the Adjutant General of the army of the United States; that the paymaster, Major Wharton Rector, who was designated by the department to pay said men, was furnished with copies of said descriptive rolls containing, as aforesaid, statements of the several sums due from said men to your petitioner; that by the Regulations of the Army of the United States, articles 195 and 196, it was the duty of said paymaster to retain from the pay due said men, on the occasion of paying them, the several sums due from them to your petitioner, and to send the amount to him; that the said paymaster did, on said occassion of paying the men, withhold or retain the same, or the greater part thereof, from their pay, as your petitioner has reason to believe; that said paymaster did at various times transmit parts of the same to your petitioner, amounting in all, to the sum of one thousand and seventy dollars and ninety-eight cents; and that afterwards he, Paymaster Rector, died, without having accounted to the petitioner for the residue, being the sum of $1,085 82, the balance due to and now claimed by him, with interest thereon till paid.

The petitioner further states that after the death of Paymaster Rector, he preferred his claim to the Second Auditor of the Treasury, the officer charged with the audit of the accounts of Paymasters of the army, and it was by him disallowed, for the reason, as he alleged, that your petitioner had no legal claim against the United States. He then applied to Congress with no better success; the Committee on Claims of the House of Representatives, on the 11th of January, 1845, and again the 4th of May, 1846, reporting unfavorably on the case, (see H. Doc., Report No. 630, 1st session 29th Congress,) as likewise did the Committee on Claims of the Senate, the 25th of February, 1847, alleging that no evidence was submitted to the committe showing that the petitioner was entitled to relief.—(Senate Doc., Report No. 184, 2d session 29th Congress.)

Nevertheless, the petitioner seeing nothing in all this to convince him that his claim is not both just and legal, and feeling constrained to conclude that its rejection heretofore was owing to a misapprehension of the import and intention of articles 195 and 196 of the Army Regulations upon which it is founded, and relying on the just judgment of the honorable Court of Claims, respectfully appeals thereto for relief.

And your petitioners will pray, &c.

J. F. POLK,
Counsel for Claimant.

Regulation as to sutlers.

ART. 195. Every facility will be afforded to the sutler in the collection of the just debts contracted with him. The sutler will take his place at the table with his books and accounts. If the amount charged against a soldier be disputed, the sutler shall be required to produce a written acknowledgment of the soldier, which shall be sufficient for the then settlement. The same mode will be observed in the case of men detached from a post leaving debts due the sutler.

ART. 196. If an individual leave a post on furlough or command, the commanding officer of the company will note on the description rolls the amount which may appear to be due the sutler; and should the soldier be paid while absent, the paymaster will stop said amount and transmit it to the sutler. Debts due the sutler by men who are discharged at a time when the paymaster is absent from the post will be collected in the same manner.

The above is correctly copied from the Army Regulations of 1841.

JOHN M. McCALLA, *Second Auditor.*

The paymaster gives a bond to the United States for the faithful discharge of his duties. The collecting and sending the sutler his money is a part of his duties.

DR. *The United States in account with S. Calvert Ford, late sutler, Carlisle barracks, Pennsylvania.* CR.

1841.					
Feb. 28	To amount detachment for Fort Gibson, under command of Lieutenant Carleton, as per muster-roll	$894 67		By cash received from Paymaster Rector, through Lieutenant Grier	$630 30
1839.				By cash received from Paymaster Rector, through Lieutenant Grier	40 68
Nov. 21	To detachment for Fort Wayne, under command of Captain Birdsall	399 25		By cash received from Paymaster Rector, through Lieutenant Grier	400 00
April 15	To detachment for Fort Gibson, under command of Lieutenant Grier	862 88		Balance due S. C. Ford, 1841	1,085 82
		2,156 80			2,156 80
	Balance due	1,085 82			

S. CALVERT FORD.

Schedule of the testimony in the case of S. Cavlert Ford, relied on to sustain the claim now pending in the United States Court of Claims.— No. 1443.

1. Adjutant General Cooper's letter (marked D) of 1st November, 1856, concerning the appointment of Mr. Ford as sutler.

2. Copies of two official bonds of Paymaster Wharton Rector, (marked E,) furnished by Second Comptroller, as per letter of 26th October, 1857.

3. Letter of Secretary of War of 1st July, 1857, (marked F,) showing the amounts charged on the muster-rolls as due to Sutler Ford from recruits detached from Carlisle barracks in 1839 and 1841, and a copy of the muster-rolls of recruits, with the several sums due from each; also marked F.

4. Letter from the Second Auditor of the Treasury of November 16, 1857, marked H.

WASHINGTON, D. C., *September* 14, 1858.

SIR: The foregoing is a schedule of the testimony in the case of S. Calvert Ford, (No. 1443,) now pending in the Court of Claims, relied on to sustain the claim; and the testimony on the part of the claimant is closed.

Very respectfully your obedient servant,

J. F. POLK,
Counsel for Claimant.

SAMUEL HUNTINGTON, Esq.,
Clerk of the United States Court of Claims.

D.

Adjutant General to J. F. Polk.

ADJUTANT GENERAL'S OFFICE,
Washington, November 1, 1856.

SIR: In reply to your communication of the 30th ultimo, I have the honor to inform you that Mr. S. Calvert Ford was appointed sutler at Carlisle barracks, Pennsylvania, July 11, 1838, and was continued as such until he resigned the appointment on the 24th November, 1845.

I am, sir, very respectfully, your obedient servant,

S. COOPER,
Adjutant General.

Mr. J. F. POLK, *Washington, D. C.*

Report of Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, Oct. 26, 1857.

SIR: I respectfully return herewith the letter of the chief clerk of the Court of Claims, and the petition of the counsel in the case of S. C. Ford, late sutler, &c., and also the "Order" of said court asking for "an authenticated copy of the official bond of Major Wharton Rector, late paymaster of the army of the United States, with the endorsements thereon and certificates thereto annexed, together with any other evidence in the Treasury Department tending to elucidate said case;" which papers were received at this office on the 16th instant, on reference from your office, with a view to a compliance with the "Order" of the court; and, in reply, I transmit herewith copies of the two bonds of late Paymaster Rector, which have been carefully compared with the originals on file in this office, and found to be correct, and also a report of the Second Auditor, of this date, to the effect that no further information is to be obtained in his office, nor is there any evidence in relation to the case on file here.

Very respectfully, your obedient servant,

J. MADISON CUTTS,
Comptroller.

Hon. HOWELL COBB,
Secretary of the Treasury.

E.

Bonds of Paymaster Rector.

Know all persons by these presents, that we, Wharton Rector, James S. Conway, and William Cummins, of the county of Pulaski and State of Arkansas, are holden, and stand firmly bound and obliged unto the United States of North America, or their certain attorney, in the penal sum of twenty thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, faithfully to be made and done, we, the said Wharton Rector, James S. Conway, and William Cummins, do bind ourselves, and each of us, our heirs, executors, and administrators, and each and every of them, for and in the whole, jointly, severally, and firmly by these presents. Signed with our hands, and sealed with our seals, this 27th day of March, in the year one thousand eight hundred and thirty-seven.

The condition, however, of this obligation is such, that whereas the above-bounden Wharton Rector is appointed a paymaster in the army of the United States aforesaid: Now, if the said Wharton Rector shall well and truly execute and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties as paymaster aforesaid; and he, his heirs, executors, or administrators,

shall regularly account, when thereunto required, for all moneys received by him, from time to time, as paymaster aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time when thereunto required any public moneys remaining in his hands unaccounted for, then this obligation shall be null, void, and of no effect, otherwise to remain and be in full force and virtue.

Done at Little Rock, in the State of Arkansas, the day and year before written.

WH. RECTOR. [SEAL.]
J. S. CONWAY. [SEAL.]
WM. CUMMINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
LUTHER CHASE.

I, Wharton Rector, do solemnly swear that I will diligently and faithfully execute and perform the duties of paymaster in the army of the United States of North America, according to the best skill and abilities of which I am possessed. So help me God.

WH. RECTOR.

Sworn and subscribed to at Little Rock, in the State of Arkansas, this 27th day of March, 1837, before—

BENJAMIN JOHNSON,
U. States District Judge.

I consider the sureties to this bond amply sufficient.

BENJAMIN JOHNSON,
United States Judge for the District of Arkansas.

TREASURY DEPARTMENT,
Second Comptroller's Office, April 18, 1837.

I have examined the within bond and find it to be in legal form.

ALBION K. PARRIS, *Comptroller.*

Approved: J. R. POINSETT.

Know all persons by these presents, that we, Wharton Rector, James S. Conway, and R. S. Gibson, are holden, and stand firmly bound and obliged unto the United States of North America, or their certain attorney, in the penal sum of twenty thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, faithfully to be made and done, we, the said Wharton Rector, James S. Conway, and R. S. Gibson, do bind ourselves, and each of us, our heirs, executors, and administrators, and each and every of them, for and in the whole, jointly, severally, and firmly, by these presents. Signed with our hands, and sealed with our seals, this 16th day of August, in the year one thousand eight hundred and forty.

The conditon, however, of this obligation is such, that whereas the above-bounden Wharton Rector is re-appointed a paymaster in the

army of the United States aforesaid, to take effect as such from and after the fifteenth day of August, 1840: Now, if the said Wharton Rector shall well and truly execute and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties as paymaster aforesaid; and he, his heirs, executors, or administrators, shall regularly account, when thereunto required, for all moneys received by him, from time to time, as paymaster aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time when thereunto required any public moneys remaining in his hands unaccounted for, then this obligation shall be null, void, and of no effect, otherwise to remain and be in full force and virtue.

WH. RECTOR. [SEAL.]
J. S. CONWAY. [SEAL.]
R. S. GIBSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. G. SCOTT.

I, Wharton Rector, do solemnly swear that I will diligently and faithfully execute and perform the duties of paymaster in the army of the United States of North America, according to the best skill and abilities of which I am possessed. So help me God.

WH. RECTOR.

Sworn and subscribed to at Van Buren, in the county of Crawford, State of Arkansas, this 4th day of September, 1840, before—
R. S. GIBSON,
Justice of the Peace.

I consider the sureties to this bond amply sufficient.
BENJAMIN JOHNSON,
District Judge of the U. S. for the District of Arkansas.

SECOND COMPTROLLER'S OFFICE,
October 9, 1840.

This bond is considered to be in legal form.
J. SEAVER, *Acting Comptroller.*

Respectfully recommended to the Secretary of War for his approval.
N. TOWSON, *Paymaster General.*

Approved: J. R. POINSETT.

Report of Second Auditor.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
October 20, 1857.

SIR: The papers referred to this office in the case of S. C. Ford, late sutler, are herewith returned. The information desired can only be obtained from the Adjutant General's office.

Very respectfully, your obedient servant,

T. J. D. FULLER, *Auditor.*

Hon. J. MADISON CUTTS,
Second Comptroller.

F.

Secretary of War to the Court of Claims.

WAR DEPARTMENT, *Washington, July* 1, 1857.

SIR: I have to acknowledge the receipt of your communication of the 9th ultimo, transmitting an order of the Court of Claims in the case of S. Calvert Ford *vs.* The United States, and to reply that the following amounts are charged on the muster-rolls as due him as sutler at Carlisle barracks from recruits detached from that post in the years 1839 and 1841:

1st. On the muster and description roll of recruits sent to companies "E," "F," "G," and "K," first dragoons, at Fort Gibson, Arkansas, April 15, 1839, $864 58. The detachment arrived June 14, 1839.

2d. On those of detachment sent 24th November, 1839, to companies "A," "C," "D," and "G," first dragoons, at Fort Wayne, C. N., and which arrived January 12, 1840, $400 82.

3d. On those of a detachment sent February 28, 1841, to companies "A," "C," "D," and "G," first dragoons, at Fort Gibson, Arkansas, and which arrived April 1, 1841, $872 28.

The above-mentioned were the only detachments sent from Carlisle barracks in the years 1839–'40, and '41, to posts or companies situated in the pay district of Paymaster Wharton Rector, United States army, and are therefore presumed to be the only ones to which the order from the Court of Claims applies. Should further information, however, be desired it will be promptly given.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

SAMUEL H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims.

F.

Copy of the muster-rolls on which the names are found of the recruits who were indebted to Sutler S. C. Ford, sent from Carlisle barracks in the years 1839, 1840, *and* 1841, *to join the first dragoons at Forts Gibson and Wayne, situated within the pay district of Paymaster Wharton Rector.*

Names.	Amount.	Remarks.
William R. English	$12 07	
Charles Livingston	12 00	
James Carr	8 19	
Smith J. Abbott	4 50	
William Roe	7 52	
William Auxer	3 15	
John Anderson	5 15	
James F. Anderson	5 51	
John A Bensa	4 48	
Abraham M. Boyd	8 53	
William Brand	5 04	
Charles Brown	5 38	
Samuel Brentlinger	6 06	Deserted December 2, 1839, on march.
James M. Cooper	7 91	
Tulley Call	6 30	
John Conigland	3 91	
Joseph Cornish	3 71	Deserted November 30, 1839, on march.
Henry Coster	3 44	
George Daubner	4 43	
Michael Dowling	5 10	Deserted November 29, 1839, on march.
Abbrecht Ebers	5 56	
Patrick Egan	2 72	
John L. Fanning	7 57	
Joseph Feerer	6 17	
James Fitzgerald	7 60	
Samuel S. Gerard	4 44	
Edward Groyer	3 90	
David Golden	5 78	Deserted November 30, 1839.
Patrick Goodman	5 98	
Thomas Griffiths	6 79	
Henry Glaraff	3 54	
Henry Ginder	4 80	Deserted December 22, 1839.
Henry Hamilton	6 45	
James Jones	5 02	
John H. Johnston	1 75	
Henry Johnson	4 90	
Charles Knowles	6 77	
William Leroy	1 25	
John Leky	2 79	
John Miller	1 20	Deserted July 14, 1838.
Thomas Milner	9 42	
John H. McDuff	5 72	
Joseph Marshall	4 86	
James McCulley	7 95	
William Mink	3 01	
Almond Marsh	5 46	Deserted December 22, 1839.
John Mathews	4 00	Deserted December 22, 1839.
John Olmsby	6 97	Delivered as a deserter to the corps of marines December 12, 1839.
John O'Brien	6 38	
William Pickering	6 97	

F—Continued.

Names.	Amount.	Remarks.
Richard Pue	$5 65	
George Park	11 34	Deserted April 1, 1839.
Mordecai M. Price	1 88	
Edward H. Patterson	5 71	
Edward Quinn	5 27	
John Ritchie	8 01	
Thomas Reed	3 40	
Charles C. Smith	6 25	Deserted December 2, 1839.
Alonzo W. Styles	6 30	Deserted December 1, 1839.
John H. Smith	5 53	
Henry Storms	6 35	
Omar W. Trocitzsch	1 66	
Cornelius W. Vangelder	4 77	
Thomas Williams	7 38	Deserted December 2, 1839.
Burthold Walheim	2 38	
Henry B. Wagoner	7 42	
Alexander Wagoner	5 24	Deserted December 22, 1839
John T. T. Winmitte	6 80	
Paul D. Wood	4 76	Deserted December 22, 1839.
William Wright	6 48	
John White	4 55	
Charles Zimmerman	4 59	Deserted July 5, 1839.
John Geisley	90	
George W. Clark	9 58	
Charles H. Morris	8 33	
Thomas Newstead	22 48	
John Bryant	10 59	
Charles Allen, 1st	7 99	Discharged April 27, 1839, by civil authority
Charles Allen, 2d	11 26	
Michael Brenni. g	7 73	
Abraham Bower	10 34	
Andrew Beebe	1 13	
John Beatty	12 29	
John G. Buchmiller	76	
Henry Bidner	2 09	
Ethelwood Benton	11 70	
Jacob Crafft	9 67	
John Castigan	10 33	
Charles Carter	13 08	
John Camp	8 50	
Samuel Demer	10 46	
John Dendurff	5 11	
Reuben Deitz	15 00	
Michael Dougherty	14 22	
Timothy Dugan	12 48	
Ephraim Dunning	8 23	
Henry Dorville	13 06	
William H. Davis	1 90	
Daniel Doyle	14 04	
St. George C. Exmouth	19 29	
John Francis	14 82	
Daniel H. Fowler	9 74	
Henry Fisher	5 75	
Benjamin Gailbaugh	4 14	
John Gilmore	10 58	
J. H. Gailbraith	10 62	
James Grimes	8 57	
Oliver Healy	10 00	Discharged by civil authority at New York.
Adam Hough	2 30	

F—Continued.

Names.	Amount.	Remarks.
Henry Hastings	$8 58	
Henry Hence	4 22	
John Jones, 1st	7 91	Deserted October 1, 1838.
William Johnson, 1st	14 00	
Stephen Johns	13 09	
Sohorda Johnson	5 71	
Samuel Keyser	8 76	
James Lindsey	9 31	
Henry Litsinger	12 68	
Michael McDermot	7 18	
Thomas McBride	6 36	
Charles Miller	10 35	
William McClosky	9 63	
Henry McLaughlin	11 92	
William McCreary	10 23	
Thomas Millgate	5 99	
John O. Moore	9 80	
William McGlenn	14 49	Discharged by civil authority at New York April 20, 1839.
William H. McDowell	9 20	
Henry Michael	12 90	
John Martin	10 76	
William Marsailles	10 44	
Alexander Newell	12 43	
John O'Connel	11 75	
Francis O'Conner	3 56	
Henry Pyle	13 73	
Amos Pitt	10 43	
Gorhen D. Price	11 73	
Jesse Peters	6 60	
Ephraim Pickett	3 79	
Charles Priest	9 86	Deserted April 21, 1839.
William Ross	6 55	
Jacob Richter	12 80	
George Ramsdale	5 21	
——— Ridgeway	12 14	
Richard Stanson	14 63	
Thomas Sommers	6 48	Discharged April 23, 1839, by civil authority, at New York.
Elihu Safford	10 00	
John S. Scott	13 18	
Charles Shaw	8 25	
Cornelius Smith	14 97	Deserted June 7, 1839.
William Thompson	14 12	
James W. Taylor	15 20	
James Vanroe	6 25	
Horatio M. Weed	7 69	
Calvin Whitmore	7 88	
John Wolf	8 69	
Christopher Whistler	14 05	
Charles Williams	14 24	
John Young	11 75	
James Sheeran	13 05	
Emanuel Kurrans	26 30	
Samuel F. Ells	6 01	
Thomas J. Foster	11 33	
Nehemiah Evans	12 31	
David Halson	9 40	
Joseph Carpenter	3 23	

F—Continued.

Names.	Amount.	Remarks.
William Stewart	$9 09	
James Arthur	14 00	
Otto Akerman	3 46	
George Ashmead	12 36	
Charles Blake	13 50	
Michael Burns	6 37	
J. M. Buxton	12 43	
H. C. Bushnel	14 00	
A. W. Beckwith	10 68	
James Carr	14 37	
Jeremiah Clark	4 66	
Michael Curry	8 75	
John Connor, 1st	12 92	
John Connor, 2d	4 97	
James Connor	14 26	
John Cox	11 56	
Edward Corran	14 00	
Terrence Donoho	14 33	
John Dunlap	5 43	
William D. Drown	11 27	
George Dougherty	3 38	
John Dougherty	2 51	
Hugh Dougherty	2 05	
George Elliott	13 97	
James Edmondson	14 91	
Thomas Farrall	5 62	
W. H. Fitzgerald	14 00	
Isaac S Goodhue	3 00	
James Gormley	10 71	
Thomas Hagan	9 19	
John Hill	3 29	
George J. Jackson	9 65	
John D. Jenkins	11 47	
Gustavus Jockmick	3 23	
Henry O. Kent	13 05	
Joseph Kirkwood	9 50	
William L. Kitler	12 00	
Francis Kowing	1 88	
William Layton	14 97	
Samuel Little	9 94	
H. S. LeCroux	15 51	
John Milo	2 75	
Patrick McKensie	14 00	
Milton Musgrove	14 06	
Alexander McElroy	14 00	
John Montgomery	13 69	
James McClure	14 97	
Edward Morgan	13 69	
James Meighan	8 57	
Charles Monille	14 50	
Henry Noyes	11 09	
William Passen	14 00	
Samuel Potter	13 00	
Robert S. Parker	13 00	
Charles Ridings	8 00	
John Stewart	6 00	
Myron W. Sampson	6 19	
Robert J. Scott	8 00	
Elias Simpson	6 98	

F—Continued.

Names.	Amount	Remarks.
Henry Simmons	$6 18	
Gustavus Seifort	11 50	
David Stratton	7 50	
J. P. C. Stower	8 00	
William Smidson	6 81	
George Thompson	10 04	
Ira Taylor	5 11	
Henry Van Sleck	3 00	
John Vance	4 19	
George F. Warneskie	7 00	
Frederick Wilmur	8 00	
Thomas Waters	3 00	
David Webb	10 50	
James Ward	14 42	Deserted April 14, 1841.
Jonathan Wright	10 00	
Peter Werner	3 70	
Malcolm W. Wright	12 53	Deserted April 10, 1841.
Nehemiah Wheeler	14 12	Deserted April 14, 1841.
Anthony Weisman	1 50	
John Wilson	4 76	
George Wilson	3 07	
Charles Swinlan	5 64	
John G. Jacgor	5 50	
Albert Koch	13 39	

H.

Report of Second Auditor.

TREASURY DEPARTMENT,
Second Auditor's Office, November 16, 1857.

SIR: Herewith I have the honor to return the papers in the case of S. Calvert Ford, late sutler in the United States army, and to report that the "list of names of the recruits" indebted to Mr. Ford, desired by the Court of Claims, can only be obtained from the Adjutant General.

I beg leave to report also that the accounts of Paymaster Wharton Rector, on file in this office, from 1839 to 1841, show no payments to Mr. Ford on account of stoppages due him, as sutler, from "recruits of the army," by Paymaster Rector.

Very respectfully, your obedient servant,

T. J. D. FULLER, *Auditor.*

Hon. J. B. FLOYD, *Secretary of War.*

Schedule of evidence for the United States.

Letter: J. H. Carleton to Paymaster Rector, October 27, 1841.
Letter: Paymaster Rector to J. H. Carleton, December 3, 1841.

J. H. Carleton to Paymaster Rector.

FORT GIBSON, CHEROKEE NATION,
October 27, 1841.

SIR: A detachment of dragoon recruits which left Carlisle barracks, Pennsylvania, for Fort Wayne, Cherokee Nation, in November, 1839, under the command of Captain Birdsall, eighth infantry, were indebted to S. Calvert Ford, esq., sutler at Carlisle barracks, for goods sold them at that post. Mr. Ford requests me to ask you if you paid these men; and if so, if you collected any or all the money due him from them. Will you be pleased to give me all the information of which you may be possessed touching this matter, as I wish to communicate to him an exact state of his money affairs in this quarter by the earliest opportunity.

Be pleased also to state how much money you collected for him the last pay day at this post and Fort Wayne; whether you took up Dr. Finley's note from Mr. Gibson, as per my request, and the full amount of money belonging to Mr. Ford now in your hands.

Would you be willing to send him or me, his attorney, your "accountable receipt" of Major Randall or Major Smith, for the amount? It would be the specie to him, and would save much trouble and transportation. Mr. Ford is a man whose business requires every dollar of his capital to be actively employed; and living entirely by his business and having no surplus capital to have recourse to, will account to you the reason for his particular inquiries of you about these funds, through me.

I have the honor to be, very respectfully, your obedient servant,
J. H. CARLETON,
Lieutenant First Dragoons.

Colonel WHARTON RECTOR,
Paymaster United States Army.

Paymaster Rector to J. H. Carleton.

VAN BUREN, *December* 3, 1841.

SIR: In answer to your letter of the 27th October, in relation to the accounts of Sutler Ford, I find on examination that he has due him and in my hands eight hundred and sixty-eight dollars and thirty-three cents, ($868 33,) which is subject to his order. I would have sent this amount to Mr. Ford before this had it been in my power, having no funds on hand but specie.

I lifted the note of Dr. Finley, which amount was four hundred dollars, and enclosed the same to him some time since.

The amount collected at Forts Gibson and Wayne at the last payment was $771 11; the amount on hand previous was $91 22.

Respectfully, your obedient servant,

WHARTON RECTOR.

Lieut. J. H. CARLETON,
United States Army, Fort Gibson.

I certify that the above is a true copy.

C. L. DAWSON,
Clerk Pay Department, United States Army.

VAN BUREN, *Arkansas, August* 26, 1842.

Received of S. Calvert Ford, of Carlisle barracks, Pennsylvania, by the hands of Major D. Randle, United States army, the original of the within copy of letter, for the purpose of acting as the attorneys of said Ford against the estate of Wharton Rector, deceased, and of collecting the claim, if possible.

PASCHAL & CAMPBELL,
Attorneys at Law, Van Buren, Arkansas.

IN THE COURT OF CLAIMS.

No. 1443.

S. CALVERT FORD *vs.* THE UNITED STATES.

The claimant's brief.

The facts in this case are—

1st. That S. Calvert Ford, the claimant, was a sutler in the army of the United States, at Carlisle barracks, during the years 1839, 1840, and 1841.—(See Adjutant General's letter to J. F. Polk, p. 6 of the printed Record.)

2d. That sutlers are subject to the regulations of the army, and to the orders of the commanding officers of the posts where they are stationed.—(General Regulations for the Army, art. 32, No. 5, and the 29th, 30th, 31st, and 60th Articles of War.)

3d. Non-commissioned officers, musicians, and privates in the army of the United States cannot be arrested or taken in execution for debt. (Act 16th March, 1802, chap. 9, sec. 23.)

4th. When troops are sent from one post to another, the sutler has no power to enforce payment of the sums due from them to him before they depart; but it is the duty of the paymaster where they are sent to stop the amounts due the sutler from their wages, and to send the same to the sutler.—(See Army Regulations, 195 and 196, p. 4 printed Record; art. 41, No. 44, General Regulations for Army.)

5th. A large number of recruits who were indebted to Sutler Ford were sent in several detachments from Carlisle barracks in 1839, 1840, and 1841, to regiments at distant posts, and were afterwards paid, in the absence of Sutler Ford, by Paymaster Wharton Rector, who, having been furnished with descriptive and muster rolls showing the several sums due the sutler, stopped the same from the wages due to the soldiers so indebted to Sutler Ford. In other words, instead of paying each man the full amount due to him, he paid him short—deducting the sum he owed the sutler from the amount due to the soldier from the United States, and in this way leaving the amount due to Sutler Ford among the unpaid money of the United States in his hands, as their agent, for disbursement.—(See printed Record, p. 10, letter of Secretary of War, and pp. 11 to 16 inclusive, copy of muster-rolls, with the name of each soldier indebted to Sutler Ford, and the amount of his indebtedness)

6th. Paymaster Rector never sent to Sutler Ford the money retained for him, as was his duty to do, and died while in commission as paymaster of the United States army.—(See Record, pp. 16 and 17, letter of Second Auditor, and p. 18, letter of Paymaster Rector.)

7th. Paymaster Rector gave bonds, deemed by the proper authorities sufficient to insure the faithful performance of all his duties as paymaster, &c.—(See Record, pp. 7, 8, and 9, copies of bonds.)

8th. Paymaster Rector, "when about to make payments to the troops" which were indebted to Sutler Ford, failed to "notify the sutler," as he was required by the 32d article (No. 21) of the "General Regulations for the Army" to do.—(See General Regulations for the Army, 1835, p. 86.)

9th. The soldiers indebted to Sutler Ford, on account of which this claim is preferred, were recruits, not yet having joined any regiment, and were stationed at Carlisle depot for instruction in military tactics previously to joining the regiment to which they were assigned west of the Mississippi river.—(See Record, pp. 10 and 11.)

10th. Recruits are mustered and paid as other troops are.—(See General Regulations for the Army, art. 36, Nos. 25 and 57, on pp. 110 and 115 of Army Regulations, 1835)

11th. When recruits are sent to regiments, muster and descriptive rolls are made for each detachment, and copies are sent to the paymaster; and "all remarks—say the regulations—relating to pay and stoppages will be continued on all subsequent '*muster and pay rolls*' until payment be made."—(See art. 36, General Regulations for the Army, Nos. 7 and 65; and art. 41, Nos. 39, 41, and 43.)

12th. Sutler Ford did all he could to obtain the money due to him. He procured the services of an officer of the army to investigate the business; and he learned that the soldiers indebted to the sutler had been paid by Paymaster Rector; the latter retaining in his hands from their pay a certain amount for the sutler; part of which he had turned over to certain agents of the sutler; and that eight hundred and sixty-eight dollars and thirty-three cents of the amount stopped still remained in the paymaster's hands. Soon after this, Paymaster Rector died, no part of the $868 33 having been sent to Sutler Ford, or turned over to any person for him.—(See Record, pp. 17 and 189.)

13th. "For the privilege enjoyed by the sutler," it is declared in the 32d article of the "General Regulations for the Army," (No. 6,) "he shall be assessed and held to pay to the post fund at the end of every two months, or oftener, as may be determined by the Council of Administration, at a rate not exceeding fifteen cents a month for every officer and enlisted soldier serving at the post," &c.

From the foregoing facts we learn that the law and regulations make no distinction—in respect to sutler's claims—between recruits and other troops. That paymasters of the army are agents of the United States, having duties prescribed by law and regulations, for the faithful performance of which they give bonds approved by the United States.

That among the duties of paymasters, under the laws and regulations in operation in 1839, 1840, and 1841, were these: 1st. To pay the soldiers within their respective districts, according to the muster and descriptive rolls furnished them, deducting from the pay due the soldiers the several sums designated on said muster and descriptive rolls as due to the United States, to laundresses, and to sutlers.

2d. When payment was made to soldiers sent from a distant post where the sutler remained, to send to said sutler the amount stopped for him from the pay of the soldiers; and,

3d. "When about to make payments to the troops, to notify the sutler, in order that he may take his place at the pay-table with his books or accounts." This is the language of the regulation.—(See General Regulations for the Army, article 32, No. 21.)

This requirement that the paymaster should deduct from the soldier's pay the amount due to a sutler at a distant post and send it to him was both reasonable and just. The soldiers being exempt by law from arrest or execution for debt, the sutler could not stop them by civil process for his claims when about to be sent away; nor could he follow detachments which might go in different directions at the same time, and to the remotest parts of the country. Thus circumstanced, justice demands such a provision in his behalf. Doubtless it was in consideration of this perplexity to which the sutler was liable that the requirement was made of the paymasters. It was no hardship to them; nor was the performance of it likely to subject the United States to loss or inconvenience, while it was a convenience to the sutler. The amount of the debts which the soldiers owed the sutler was simply to be stopped or retained from their pay by the paymaster, whose duty it was to transmit the same to the sutler, a duty required by the United States, and for the faithful performance of which and other duties they had taken his bonds in penalties and sureties deemed by them "amply sufficient."—(See Record, pages 8 and 9.)

Nor was this money which the soldiers owed the sutler paid to them by the paymaster and by them returned to him as to an agent of the sutler. It was retained by the paymaster from the pay due to them, and remained undisturbed money in his hands and part of the funds advanced him by the United States, to account for which he had, as aforesaid, given bonds to their satisfaction; and this sum so retained from the pay of the soldiers and due to the sutler he was re-

quired by the general regulations for the army to transmit to the sutler. And this is the case precisely of Sutler Ford and Paymaster Rector.—(See Record, pages 8 and 9.)

In conclusion, the following position is a summary of the whole matter, viz:

That Paymaster Rector was responsible to the United States, and to none else, for all the money advanced him for disbursement, and was answerable to the same on his bonds for all sums retained by him from the pay due to the officers or soldiers of the army. A part of the duties, for the faithful performance of which the United States took his bonds, with sureties deemed by them "amply sufficient," was to stop or retain from the pay of the soldiers paid by him the amount he should find they owed the sutler, and to send the same to him. If, then, Paymaster Rector retained from the pay of the soldiers paid off by him the amount they owed Sutler Ford, and died without accounting for it, his securities are responsible for the same to the United States, and the latter to Sutler Ford; and if the said paymaster neglected to retain the amount due as aforesaid, or having retained, neglected to send it to Sutler Ford, he failed to perform a duty for which his sureties were responsible to the United States, and the latter, of course, to Sutler Ford.

JOSIAH F. POLK,
Counsel for Claimant.

IN THE COURT OF CLAIMS.

S. CALVERT FORD *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for money collected by Wharton Rector, an army paymaster of United States soldiers, due said Ford as a sutler at Carlisle barracks, Pennsylvania.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That the claimant was a sutler at the military barracks in Carlisle, Pennsylvania, from 1839 to 1845.

Second. That Wharton Rector was a paymaster in the United States army in 1839, and until after December 3, 1841.

Third. The said Rector gave the usual bond as paymaster.

Fourth. That said claimant had accounts against various soldiers for things furnished them at the Carlisle barracks in 1839, 1840, and 1841, but there is no evidence of how much they really owed him.

Fifth. That lists showing what he claimed of them were sent to the several posts where Paymaster Rector was to pay such soldiers, for the purpose of having him to deduct from their pay the sums proved or admitted to be due from them to said Ford.

Sixth. That said Rector collected and paid over a portion of the

amount claimed by said Ford, and on the 3d of December, 1841, he admitted, in a letter to Lieut. Carleton, that he had collected and there remained in his hands, *subject to the order of said Ford*, the sum of $868 33.—(Rector's letter, Record, p. 18.)

Seventh. That Rector died prior to the 26th of August, 1842, and that on that day Paschall & Campbell, attorneys at law, received from the present claimant the original of Rector's letter of the 30th of December, 1841, above referred to, for the purpose of endeavoring to collect the said $868 33 out of said Rector's estate.

Paschall & Campbell receipt, Record, p. 18.

Eighth. There is no evidence that the United States ever received any money on account of said Ford from Rector.

Ninth. There is no evidence that Rector, in collecting money of soldiers for Ford, acted as agent for the United States, or in any other capacity than as agent for Ford.

Tenth. There is no evidence showing whether or no Ford received what was collected for him by Rector of him or his estate.

LEGAL PROPOSITIONS.

FIRST. *No legal liability exists in this case against the United States, because they have had no transactions with the plaintiff either—*

1st. Under a law of Congress ; or
2d. Under a regulation of an executive department ; or,
3d. In a manner to create a contract express or implied.

The United States have had no transactions with the claimant. He was made a sutler under the army regulations for his own advantage, and was permitted certain privileges to promote his own interests. But he rendered no service to the United States. They permitted him to serve himself where persons not licensed could not go and trade. His transactions with the soldiers was his individual affair, and for which the United States were not accountable to him. The government extended to him facilities for collecting his debts which were not extended to other traders. This lays no foundation for a claim that they are bound to collect and pay over his debts for him. Neither the law nor regulations require this at the hands of the government, nor has any promise, express or implied, been made requiring it to do so. Hence, there is no foundation in this respect for this claim.

SECOND. *In collecting balances due from soldiers to sutlers, the paymaster acted as the agent of the latter, and not of the United States.*

The claimant insists that Paymaster Rector acted as the agent of the United States in collecting money for him, and of course that the government was his agent in making these collections. The government denies that it was the sutler's agent, or that, in permitting the paymaster to serve the sutler, he was acting in any other capacity than as the private agent of such sutler.

The government had no lawful authority to undertake an agency for the sutler to collect his debts, and any agreement of the kind would be a nullity. It did not make any such undertaking. Money

thus collected could not go into the treasury, nor could the United States hold the paymaster responisble for it, nor collect it of him, because it would not belong to them. His bond is conditioned to account for *public* moneys, and not those of third persons. The United States can, under it, only require him to refund to them what belongs to them.

But in collecting money from soldiers for sutlers, the paymaster becomes their agent, and accounts to them for what he receives. Such moneys do not enter into his public accounts. In such cases the government merely permits their officer to serve the sutler, and regulates the mode of so doing. This is evident from the regulations quoted, (Record, p. 4,) which show that the sutler may attend personally at the time of paying soldiers and collect; and if the soldier is off on detachment, the paymaster will stop the amount for the sutler. In doing this he acts wholly for the creditor of the soldiers, and not for the government. This was the understanding of the parties at the time, and hence the application to Rector to pay debts out of the collections, and for him to account to Ford for the balance. (Record, p. 17.)

When applied to in 1841, Rector admitted a balance in his hands, not due to the government, but to Ford, which was in specie, and therefore he did not send it, because he had no means of transmitting the specie. But Ford was informed that the money was ready, and subject to "*his order.*"

The claimant, by his brief, seems to suppose that it was Rector's duty to send to him, and, of course, at his own expense and risk, whatever be collected. This is not the fair meaning of the regulation, which means that it should be paid over when properly called for. So Rector understood it, and at that time Carleton, Ford's agent, must so have understood it from his letter, as he desired to save the transportation of specie. But if the regulation made it the duty of Rector to carry the money to Ford, and he refused to do so, the latter has no just cause of complaint, because Rector's responsibility was to the United States and not to him, Ford. What answer he could make, and whether the government would be satisfied with it, was a question between him and the government. In case if Rector refused to act at all, Ford could sustain no action against him or the United States. But when money was collected, Rector would be liable as Ford's agent for money had and received for his use.

Ford was not obliged to employ Rector to collect his debts. He could resort to the law of the land, like all other persons. The suggestion that soldiers could not be arrested and imprisoned can have no weight, because in Pennsylvania, and in nearly all the thirty-two States, there is no law authorizing imprisonment for debts originating on contract, where they were not fraudulently contracted. But Ford voluntarily employed Rector as his agent, called him to account as such, and must look to his estate for whatever is his due. It would be grossly wrong to make the United States liable for their attempt to oblige and aid him in collecting his debts. Such a result would be a harsh visitation for the attempt to serve him.

R. H. GILLET, *Solicitor.*

JANUARY 8, 1859.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

S. CALVERT FORD *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

The following are the facts in this case:

The claimant was appointed sutler at Carlisle barracks, in Pennsylvania, on the 11th of July, 1838, and continued such sutler until the 24th of November, 1845.

There are charged on the muster-rolls, as due to the claimant as sutler at Carlisle barracks from recruits detached from that post in 1839 and 1841, as follows:

1. On the muster and descriptive roll of recruits sent to companies E, F, G, and K, first dragoons, at Fort Gibson, Arkansas, April 15, 1839, $864 58.

The detachment arrived June 14, 1839.

2. On that of detachment sent November 24, 1839, to companies A, C, D, and G, first dragoons, at Fort Wayne, C. N., and which arrived January 12, 1840, $400 82.

3. On that of a detachment sent February 28, 1841, to companies A, C, D, and G, first dragoons, at Fort Gibson, Arkansas, and which arrived April 1, 1841, $872 28.

The posts and companies to which said detachments were sent were situated within the pay district of Paymaster Wharton Rector, United States army.

The paymaster collected from said recruits a considerable sum of money, and there remained in his hands of that money, on the 3d of December, 1841, the sum of $868 33 due to the claimant.

The petition alleges that the paymaster afterwards died, leaving said sum of $868 33 unpaid; and it is for that sum that this suit is brought against the United States.

We can perceive no ground on which this claim can be sustained. The Army Regulations cited by the claimant afforded considerable facilities to the sutler for the collecting of debts due to him from the soldiers, but whether he would avail himself of those facilities, or pursue any other lawful means to collect such debts, was entirely at his option. In availing himself of the assistance of the paymaster in collecting the debts from the soldiers he necessarily made the paymaster his agent in the business, and the money collected by the paymaster would be subject to the sutler's order. If the paymaster afterwards refused or neglected to pay he might be liable to the suit of the sutler, but it seems impossible that for such default of the paymaster the United States can be responsible to the sutler. There was certainly no agreement, express or implied, with the claimant on the part of the government for any such responsibility. This claim was presented at the treasury and rejected. It has also been before Congress. The Committee on Claims of the House of Representatives, on the 11th of January, 1845, and again on the 4th of May, 1846, reported against it. The claim was also reported against by the Committee on Claims of the Senate on the 25th of February, 1847.

Our opinion is, that the claimant is not entitled to recover.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 207.

ERASTUS WILLIAMS, ADMINISTRATOR OF ELISHA TRACEY.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

ERASTUS WILLIAMS, ADMINISTRATOR OF ELISHA TRACEY, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Original documentary evidence in the case, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, Adm'r of Elisha Tracey, *vs.* THE UNITED STATES.

To the honorable the Judges of the Court of Claims:

The petition of Erastus Williams, of Norwich, in the State of Connecticut, adm'r of the estate of Elisha Tracey, late of said Norwich, deceased, respectfully represents: That, prior to the last war with Great

Britain, the said Tracey was appointed, under the direction of the President of the United States, an agent for fortifications and soon afterwards was directed to perform the duties of the quartermaster's department, within the district in which he resided. That in the month June, 1811, he was directed by the Secretary of War to erect a public arsenal for manufacturing travelling and gun carriages, and other implements of war, when he employed a large number of artificers during the whole period that the war continued, as an agent of the Ordnance department. That in the year 1812, soon after the declaration of war, he was appointed a purchasing commissary. That during the whole period of the war he continued perform, in military district number two, the duties of the said four offices, there being no other person in said district appointed or acting in the discharge of said duties. That for all said services compensation was, at that time, claimed by said Tracey; but with the exception of a small allowance of $1,637 97, made to him at one time by the Secretary of War, the only compensation allowed him was that of a purchasing commissary, an office with a very limited commission. That during the same period of time there were four distinct officers in other districts of the United States in the discharge of these separate duties, and receiving compensation therefor. That during the same period of time, in addition to the foregoing, he performed the duties of an issuing commissary. That the duties imposed upon him in the discharge of these offices were arduous and responsible, and more than half a million of dollars were disbursed by him on account of the government during said period; all of which services were most faithfully performed, and to the satisfaction of the government. And your petitioner claims that the said Tracey was entitled to receive the compensation appropriate to the several offices, and for which no adequate compensation has been made.

Your petitioner further states, that, not being furnished with funds by the United States, between the 1st day of January and the 27th June, 1813, he advanced his own funds for the use of the United States, by borrowing money from the banks at Norwich and New London, on which he paid interest amounting to the sum of $348 25.

Also, that the said Tracey having received a draft from the Treasury for the sum of $20,000, and the same having been protested, he paid interest on the same from the 30th September to the 31st December, 1814, amounting to the sum of $300.

Your petitioner also represents, that the treasury notes and other funds received by said Tracey from the United States were at the time so far depreciated in market that, in order to convert the same into specie, there was an actual loss of $3,080, being for the difference of exchange for specie paid in Boston and Providence, and received in New York funds. That it also appears from the official statements of the Treasury Department that said Tracey was, at the different periods shown by the said accounts, in advance for a large amount to the United States, as will appear by said official statements and the accounts of said Tracey at the treasury. That the interest on said balances, as shown by said statements while the same continued, amounted to the sum of $1,604 37.

Your petitioner therefore prays your honors to inquire into the said several matters of claim, and to grant him adequate relief in the premises. The said claim belongs alone to the legal representatives of said Elisha Tracey.

In the Senate this claim was presented by said Tracey to the 2d session of the 14th Congress, and referred to the Committee on Claims, who were discharged, and leave granted to withdraw.

In the 1st session of the 20th Congress the Committee on Claims reported a bill for his relief, which was rejected, reconsidered, and indefinitely postponed.

In the 1st session 21st Congress a bill was passed by the Senate for his relief, having been reported by the Committee on Claims; and in the 1st session 29th Congress leave was granted to withdraw the petition.

In the House of Representatives in the 1st session 21st Congress the Senate bill was adversely reported by the Committee on Claims, and leave to withdraw granted.

In the 1st session of the 29th Congress, and the 1st session of the 30th Congress, the petition of the representatives of said Tracey was presented and referred to the Committee on Claims, but no report or other action had upon the same.

ERASTUS WILLIAMS,
Administrator.

STATE OF CONNECTICUT, *County of New London, ss:*

On this 22d day of February, A. D. 1858, personally appeared Erastus Williams, the petitioner and claimant in the foregoing petition, and then and there made solemn oath that the facts stated in the said petition are true, to the best of his knowledge and belief.

Before me, JNO. T. WAITE.
A Commissioner of the Court of Claims.

ERASTUS WILLIAMS, administrator of ELISHA TRACEY, *vs.* THE UNITED STATES.

List of papers to be printed on behalf of petitioner.

1. Secretary of the Treasury to Committee on Claims, March 26, 1830.
2. Elisha Tracey's claim for loss on funds and for interest paid at banks.
3. Mr. Dallas's letter on the subject of interest on $20,000.
4. H. Perkins, cashier's, certificate.
5. A. Fletcher, cashier's, certificate.
6. Hon. Wm. H. Crawford's letter to E. Tracey, March, 1823.
7. Hon. Peter B. Porter's letter.
8. Wm. Lee, 2d Auditor's, statement.
9. D. Gelston, collector, New York.
10. Chashier, Manhattan Company.

11. Col. Kingbury's certificate, October 30, 1828.
12. District Order, September 8, 1814.
13. Certificate, T. F. Tucker, Treasurer of the United States.
14. A. J. Dallas, July 8, 1815.
15. Mr. Dallas, December 22, 1814.
16. Elisha Leffingwell's, deposition.
17. Daniel Shelden, jr., letter, September 18, 1815.
18. Russell H. Nevins's deposition.
19. Hon. Jonathan Roberts, May, 1823.
20. Richard Whiley's certificate.
21. Jno. H. Eaton, Secretary of War, to E. Whittlesey, March, 1830.
22. Statement from Treasury Department, 3d quarter, 1814.
23. Statement from Treasury Department, 4th quarter, 1814.
24. Statement from Treasury Department, 1st quarter, 1815.
25. Statement from Treasury Department, 2d quarter, 1815.
26. Mr. Ruggles's report.

Papers from the Treasury Department.

No. 1.

Letter from the Chairman of the Committee of Claims to the Secretary of the Treasury, dated March 22, 1830.

WASHINGTON, *March* 22, 1830.

SIR: I am directed by the Committee of Claims, to which was referred a bill from the Senate for the relief of Elisha Tracey, to ask information on the following points, viz:

1st. What amount of compensation has been paid to said Tracey for his services, and for emoluments in the Quartermaster's department during the late war.

2d. What amount has been paid to him for clerk hire in the Quartermaster's department, and who were employed as clerks, and the amount paid to each?

3d. Similar and distinct inquiries are made as to his compensation and emoluments in the Ordnance department as agent for fortifications, and as a purchasing or issuing commissary, and for his clerk hire in each, if any.

4th. How much money was expended by him for and on behalf of the United states: 1st, in the Quartermaster department; 2d, in the Ordnance department; 3d, as agent for fortifications; 4th, as issuing commissary?

If he received any per centage on moneys expended, or extra allowances not included in the inquiry of compensation for services or emoluments; the committee wish to be informed of the amount, as Mr. Tracey is anxious to have the decission of the committee at an early day. The committee will thank you for an answer as soon as your convenience will permit.

In addition, the committee wish to be informed whether any

interest has been allowed to Mr. Tracey for advances made or money borrowed, and, if so, the amount, and on what particular sums?

With due respect, I am yours, &c.,

E. WHITTLESEY.

Hon. SAMUEL D. INGHAM,
Secretary of the Treasury.

Letter from the Third Auditor to the Secretary of the Treasury, dated March 26, 1830.

TREASURY DEPARAMENT,
Third Auditor's Office, March 26, 1830.

SIR: I have the honor to return the letter addressed to you by the chairman of the Committee of Claims of the House of Representatives, dated 22d instant, and by you referred to this office on the 23d, and received by me on the 24th, with a statement embracing answers to the inquiries made by the committee.

In reference to that relative to interest, I have thought it proper to furnish a copy of my letter on this subject to the chairman of the Committee on Claims in the Senate, dated January 21, 1828, from which it will appear that no allowance on that amount has been made through this office.

With great respect, your obedient servant,

PETER HAGNER, *Auditor.*

Hon. SAMUEL D. INGHAM,
Secretary of the Treasury.

Copy of letter of the Third Auditor to the chairman of the Committee of Claims of the Senate, dated January 21, 1828.

TREASURY DEPARTMENT,
Third Auditor's Office, January 21, 1828.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, enclosing the petition and papers of Mr. Elisha Tracey, with two accounts for interest and difference of exchange, as follows:

First account.

To interest paid at the banks from January 1 to June 27, 1813	$348 25	
To interest on protested bills from September 30 to December 1, 1814, on $20,000	300 00	
		648 25
To difference of exchange for specie paid in Boston and Providence, and received on New York paper, on $15,400, at 20 per cent		3,080 00
		3,728 25

Second account.

To interest on $42,373, balance due as per official statement, from October 1, 1814, to January 1, 1815	639 59	
To interest on $14,442, balance due, as per official statement, from January 1 to September 1, 1815	619 89	
To interest on $8,642, due, as per official statement, from April 1 to September 30, 1815	259 26	
To interest on $5,977, balance due, per official statement, from July 1 to September 30, 1815.	89 63	
		1,604 37

In compliance with your request that I might furnish such evidence in relation to the settlement as may be in this office, and to reply to each particularly, I have the honor to state that the first of those accounts appears to have been presented to the late accountant of the War Department, and returned by him as not admissible in January, 1816, as will be seen by his remarks on the account. The account, with the documents in support of it, was again presented by Mr. Tracey to the Secretary of War, and by him turned over to this office, with his decision thereon, as will be perceived by the accompanying copy of a letter in which the account and papers were returned to Mr. Tracey in March, 1820. The subject of Mr. Tracey's claim would again appear to have been before the Secretary of War, because I find a letter addressed to him in March, 1823, a copy of which is enclosed for the information of the committee. No report can be found in the records of that office to have been made to Mr. Roberts on Mr. Tracey's claim. His present account for interest on balances reported in favor of Mr. Tracey on the settlement of his accounts for disbursements in the third and fourth quarters of 1814 and the first and second quarters of 1815, does not appear to have been before presented. Had the claim been before presented at this office, it would have been returned o him as entirely inadmissible, there being neither law nor usage to sustain its allowance.

Very respectfully, your obedient servant,

PETER HAGNER, *Auditor.*

Hon. BENJ. RUGGLES,
Senator of the United States.

Copy of letter from the Third Auditor to the chairman of the Committee of Claims, dated March 29, 1830.

TREASURY DEPARTMENT,
Third Auditor's Office, March 29, 1830.

SIR: Agreeably to the request contained in your letter of this date, I have the honor to enclose to you herewith a statement showing the disbursements made by Mr. Elisha Tracey, late deputy commissary, in

each year and under each head of expenditure. It is not believed that in the years 1812 and 1813 there was a quartermaster at New London.

Very respectfully, your obedient servant,
PETER HAGNER, *Auditor.*

Hon. ELISHA WHITTLESEY,
Chairman Committee of Claims, H. R.

Statement exhibiting the disbursements made by Elisha Tracey in each year and in the different offices he held, furnished in pursuance of a request from the Committee of Claims of the House of Representatives, dated March 29, 1830, viz:

For the commissary's department:		
On account of clothing between July 15, 1812, and June 30, 1815—		
In the year 1813	$210,669 10	
In the year 1814	159,302 55	
To June 30, 1815	4,635 60	
		374,607 25
In the quartermaster's department:		
On account of quartermaster's department, July to December 31, 1812	1,711 91	
In the year 1813	21,368 23	
In the year 1814	28,196 52	
To June 30, 1815	1,576 40	
		52,847 06
On account of ordnance, July to December 31, 1812	6,069 62	
In the year 1813	19,546 67	
In the year 1814	18,276 11	
To June 30, 1815	4,372 24	
		48,258 64
On account of fortifications, July to December 31, 1812	1,815 29	
In the year 1813	18,017 69	
In the year 1814	9,351 85	
To June 30, 1815	661 67	
		30,346 50
On account of hospital department, July to December 31, 1812	10 79	
In the year 1813	137 39	
In the year 1814	383 47	
To June 30, 1815	604 01	
		1,135 66
On account of contingencies—		
In the year 1813	203 25	
In the year 1814	527 71	
To June 30, 1815	170 68	
		901 64

The last two items, for hospital department and contingencies, were not embraced in the former statement furnished, not being in the call of the committee.

Subsequent to the 30th of June, 1815, when Mr. Tracey's duties ceased as deputy commissary general, he made disbursements as an acting deputy quartermaster general from July to December, 1815, as follows:

On account of clothing for beds in 1813	$87 57
On account of quartermaster's department	618 07
On account of ordnance	4,524 25
On account of fortifications	799 79
On account of hospital department	376 43
	6,406 29

PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,
Third Auditor's Office, March 29, 1830.

Statement exhibiting the sums disbursed by Elisha Tracey, late deputy commissary, between the 1st of July, 1812, and the 30th of June, 1815, when his duties as deputy commissary ceased, on account of clothing, fortifications, quartermaster's, and ordnance departments; showing also the amount of compensation he has been allowed for his services as deputy commissary, and the allowances made him as compensation for his services for disbursing on account of fortifications, quartermaster's, and ordnance departments, &c., in the above period and to the 31st of December, 1815; also the amount that has been allowed on account of clerk hire, furnished in pursuance of a letter from the Hon. Elisha Whittlesey to the Secretary of the Treasury, dated March 22, 1830, referred to this office, viz:

Disbursements in the commissary's department on account of clothing, &c.	$374,407 25	
On account of fortifications	30,346 50	
On account of quartermaster's department	53,847 06	
On account of ordnance department	48,258 64	
		506,859 45
Amount of compensation allowed for his services as deputy commissary		5,724 95
Amount allowed him as compensation for his services in making disbursements on account of fortifications, quartermaster's and ordnance departments, &c., by the Secretary of War, the pay and emoluments of an assistant deputy quartermaster general, from July 1, 1812, to September 30, 1814, at which period the allowance was ordered by the Secretary to cease		1,637 97

This sum charged by Mr. Tracey for clerk hire, at $500 per year for three years; (the persons employed were C. Carew, C. Sterry, and Wm. Huntington,)	1,500	
From which was deducted one year's salary, in consequence of payments made the clerks for services as inspectors of clothing, &c.	500	
Allowed		1,000
Mr. Tracey continued to make disbursements, amounting to about $6,000, in the quartermaster's and ordnance departments, fortifications, &c., subsequent to his duties as deputy commissary, to wit: between July 1 and December 31, 1815; for this service he was allowed by the Secretary of War, for six months ending December 31, 1815, the pay and emoluments of an assistant deputy quartermaster general, amounting to		387 20

PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,
Third Auditor's Office, March 26, 1830.

Copy of letter from Secretary of Treasury to E. Whittlesey.

TREASURY DEPARTMENT, *March* 26, 1830.

SIR: I have the honor to transmit a report from the Third Auditor which contains the information requested in your letter of the 22d instant relative to the case of Elisha Tracey.

I have the honor to be, very respectfully, your obedient servant,

S. D. INGHAM,
Secretary of the Treasury.

Hon. E. WHITTLESEY,
Ch. Com. Claims, Ho. Rep.

E. Tracey's claim.

UNITED STATES TO ELISHA TRACEY, *Dr.*

To interest paid at the banks from January 1st to June 27th, 1813, (see certificates Nos. 1 and 2,)	$348 25
To interest on a protested draft from September 30th to December 31st, 1814, on $20,000, (see Mr. Dallas's letter, deposition No. 6, and sundry letters,)	300 00
To difference of exchange for specie paid in Boston and Providence and received in New York paper on $15,400, at 20 per cent. (see Nos. 3, 4, 5, 6 and 7,)	3,080 00
	3,728 25

The above is inadmissable without the sanction of the Secretary of War.

TOBIAS LEAR.

DEPARTMENT OF WAR,
Accountant's Office, January 24, 1816.

No. 2616. $20,000.

TREASURY OF THE UNITED STATES,
Washington, September 24, 1814.

SIR: At sight pay to Elisha Tracey, esq., deputy commissary, or order, twenty thousand dollars, value received.

(Signed by the Treasurer.)

To JEDEDIAH HUNTINGDON, esq.,
Collector of New London.

[Endorsed.] *December* 28, 1814.

Pay the contents to Mr. William H. Coit on my account.
ELISHA TRACEY, *D'y. Com'y.*

[Endorsed.] Received the within December 30th, 1814.
W. H. COIT.

[Endorsed.] The within draft is a true copy of the original.
TH. T. TUCKER.

Presented for payment, October 11th, 1814, and refused.
JOSEPH WILLIAMS,
Notary Public.

Secretary of the Treasury to E. Tracey.

TREASURY DEPATRMENT, *January* 16, 1816.

SIR: The facts that the Treasurer's draft in your favor for 20,000 dollars upon the collector at New London, dated the 24th day of September, 1814, was protested, and that it was not paid until the 31st day of December, 1814, are incontrovertibly true. But, in order to enable me to admit those facts, I have been under the necessity to examine the course of the transaction, as it appears from your letters and the records of this office, and I find that the draft was remitted to you, in your official capacity as a deputy commissary; that you were offered payment in treasury notes but declined it; and that you caused the draft to be protested, but still stated that it was an affair of the government. It is true, that you afterwards urged that you had been obliged to borrow money, upon interest, for the public service, in consequence of the non-payment of the draft; that the government had saved the interest on the treasury notes which you refused to accept; and that you were entitled, in equity, to be reimbursed the interest

which you had actually paid. But the proofs of these allegations have not been produced or required, because, whatever might be the equity resulting, I had no power to act upon them. If you borrowed money upon interest to make purchases as a commissary, the claim for reimbursement should form an item in your official accounts at the War Office.

I am, very respectfully, sir, your obedient servant,

A. J. DALLAS.

ELISHA TRACEY, esq.

H. Perkins's certficate.

NORWICH BANK, *December* 13, 1815.

I hereby certify that Elisha Tracey, esq., deputy commissary, paid interest at the bank on two thousand dollars from the 5th of January, 1813, to the 11th of February following, and on fifteen hundred dollars from January 19, 1813, to the 13th of June following; also on twelve hundred dollars from April 23, 1813, to June 14; and, from the nature of the checks drawn on the bank for the said sum, I have reason to believe they were expended for the service of the United States.

H. PERKINS, *Cashier.*

A. Thatcher's certificate.

NEW LONDON BANK, *December* 11, 1815.

I certify that from the 1st day of January, to the 17th day of June, 1813, Elisha Tracey, esq., deputy commissary, was paying interest for money borowed of this bank, on the sum of *ten thousand dollars*, which money, from the nature of the checks which were drawn for it to many different persons, was in my opinion undoubtedly for the purpose of paying debts due from the United States to sundry persons who had furnished supplies for the same.

A. THATCHER, *Cashier.*

Secretary of the Treasury to E. Tracey.

TREASURY DEPARTMENT, *March* 19, 1823.

SIR: In reply to your letter of the 22d ultimo, I have the honor to state, that I recollect distinctly that when you were in this place in the winter of 1816, you presented an account for interest, and for the difference between the funds received by you, and specie, when you had been under the necessity of paying specie in Boston and Providence. I have no recollection of having offered any opinion in favor of the claim of interest upon balances from time to time due on account, but I recollect distinctly that I was then of opinion that you were en-

titled to receive from the goverment the amount of interest you had paid to banks, or upon protested treasury drafts, and for any loss you had sustained in converting the funds placed in your hands by the government, when such conversion was necessary to meet the engagements you contracted on account of the government.

For interest paid by contracts to bank on account of the failure of the government to make the advances stipulated by contract, allowances were made by my direcion, when in the War Department, and I should not have hesitated to make the same allowance to an officer of the government, had claims of that kind been presented after the decision was made.

I recollect very distinctly advising you to waive those items in the settlement of your accounts at that time, under a belief that some general provision would be adopted in the course of the session which would prevent the necessity of resorting to any measure by the department which might be considered a departure from the established usage in the settlement of accounts.

I remain, with respect, your most obedient servant,

WM. H. CRAWFORD.

Colonel ELISHA TRACEY.

Secretary of War to E. Tracey.

DEPARTMENT OF WAR, *December* 19, 1828.

SIR: I have examined with some attention the papers which you have presented to me in support of your claims against the government, for a compensation beyond what you have already received for services rendered and responsibilities incurred by you during the late war with Great Britain. I think that you have still some equitable claims, and, were your call now an original one, it is probable that I should make you some further allowances, without imposing on you the necessity of a resort to Congress.

But, inasmuch as your claims have already been, not only before the departments, but also before Congress, I do not feel at liberty to interfere; but recommend to you to continue your application to Congress, as the only means by which you can expect to obtain relief.

Very respectfully, your obedient servant,

P. B. PORTER.

ELISHA TRACEY, Esq.

Certificate of Second Auditor.

TREASURY DEPARTMENT,
Second Auditor's Office, February 12, 1828.

It appears from the books of the late office of superintendent general of military supplies, deposited in this office, that Elisha Tracey,

then deputy commissary, made returns to that office for issues of clothing, ordnance supplies, &., &c., from the 1st of April, 1813, to the 30th June 1815.

W. LEE.

D. Gelston's certificate.

COLLECTOR'S OFFICE, NEW YORK,
January 2, 1815.

I do hereby certify that, on the 6th day of January, 1815, by direction of the Secretary of the Treasury of the United States, I paid to Elisha Tracey, deputy commissary, by my checks on the banks of this city, a draft in his favor for the sum of fourteen thousand five hundred dollars, drawn by Jedediah Huntington, esq., collector of the district of New London.

D. GELSTON, *Collector.*

J. Huntington's check.

December 20, 1814.

Cashier of Manhattan Company, pay to Elisha Tracey, or order, nine hundred dollars.

J. HUNTINGTON.

$900.

Paid and charged January 6, 1815.

S. FLEWELLING,
Cashier Manhattan Co.

Colonel Kingsbury's certificate.

FRANKLIN, *Connecticut, October* 30, 1828.

I certify that during the late war I was stationed in military district No. 2, constituted by the States of Connecticut and Rhode Island, as an inspector general, a part of which period I commanded in said district.

Colonel Elisha Tracey, of Norwich, during that whole period, performed the duties of purchasing commissary; he also, during the same period, performed the duties of the quartermaster's department, there being no other public officer in that district; as well as those of agent of fortification, Forts Griswold and Trumbull being rebuilt under his agency and disbursement of money; in addition to which he had an ordnance establishment at Norwich, where a great number of artificers were employed prior to and during the war, manufacturing gun-carriages and carriages for forts. This arduous and multiplied business was performed to the entire satisfaction, as I have reason to believe, of the commanding generals of that district. I can

truly say he was a vigilant and faithful officer, being the factotum of all the supplies in all the various army departments. In addition to this, he procured to be made and issued all the ready-made clothing and camp equipage for the troops at New London and elsewhere, in the district and for the recruiting service, as I believe, to a great extent. At the time the British fleet was blockading Commodore Decatur's ships, and threatening their destruction, it became necessary to keep out large bodies of militia, who required camp equipage, &c.; he exerted himself in every respect, and, as I verily believe, in addition to his personal exertions, lending his own personal credit to obtain supplies, the credit of the government being at that time prostrated in New England, by which he has always claimed a heavy loss in consequence of paying specie paper and receiving a depreciated currency.

The duties that were performed were, in other districts, divided between several public officers. I may cheerfully say, that not only the commanding and other officers of the district but Commodore Decatur, looked to him on all emergencies during the war, and that but for his exertions and his personal credit, the public service must have suffered.

JACOB KINGSBURY.

Late Inspector General in the U. S. Army.

General Cushing's orders.

HEADQUARTERS MILITARY DISTRICT No. 2,
New London, September 8, 1814.

SIR: Your letter of the 30th of August, and 4th and 7th instant, have been duly received.

The arrival of the apothecary general in this district has removed the necessity for acting on the return of Doctor Cunningham.

The enclosed extract from the regulations of the War Department will show, that I have nothing to do with clothing returns, which must, in all cases, be signed by the senior officer of the corps, who will be held accountable for their correctness. Captain McKeon, being the senior officer of artillery in this military district, has been referred to you for such clothing as he is authorized to draw for under these regulations.

I am distressed by the information you give me in relation to the necessary arms for the national troops in this vicinity, as well as by a review of the very limited supply of camp equipage for the militia now in service. For God's sake, exert yourself to relieve our present wants, and to furnish such further supplies as may be called for.

The proclamation of the President, which you will have seen in the public papers, if it has not been officially communicated, admonishes us of what we are to expect from the enemy, and enjoins the most vigorous preparations for the defence of our country. With the proper arms, ammunition, quartermaster's stores, and cash, and the support of the militia of this State, which the proclamation authorizes me to call into service, I should have no fears for the safety of the seacoast. But when I reflect on our own deficiencies, and on the faint hope that

any further portions of the militia will be placed at my disposal, I must own that I am not without my fears, that great and serious depredations may soon be committed within the district under my command.

I am sir, very respectfully, your obedient servant,

T. H. CUSHING,
Brigadier General Commanding.

Colonel ELISHA TRACEY,
Deputy Commisary of Purchases, Norwich.

United States Treasurer's certificate.

TREASURER'S OFFICE, *January* 18, 1828.

I certify that warrant No. 1,797, in favor of Elisha Tracey, for two thousand three hundred and seventy-three dollars and twenty-eight cents, was paid by me on the 29th of December, 1814, and also warrant No. 1,798, in his favor, for forty thousand dollars, paid by draft No. 2,999, on commissioner of loans, New York, the 30th December, 1814, as appears by the books in this office.

T. T. TUCKER,
Treasurer United States.

Secretary of War to E. Tracey.

DEPARTMENT OF WAR, *July* 8, 1815.

SIR: It appears from the several reports made by the accountant of this Department, that there is due to you twenty-nine thousand and sixty-one dollars and forty-one cents; for which amount warrants are made out, and can be immediately paid, either in the District of Columbia, or at Baltimore; but, should you prefer it, the amount will be paid at New York, so soon as the situation of the treasury will admit.

I have the honor to be, with great respect, your ob't. serv't,

A. J. DALLAS.

E. TRACEY, Esq.

Secretary of War to J. Huntington.

TREASURY DEPARTMENT, *December* 22, 1814.

SIR: Mr. Crary, who holds a draft of the Treasurer upon you for twenty thousand dollars, will shortly present it again for payment. You will be pleased to pay to him in part of the same, the whole amount of money in your hands other than treasury notes; and for the remainder, you will draw and deliver to Mr. Crary, a bill on David Gelston, collector of the customs at New York, who is instructed to pay the same.

You will apprise me of the amount of the bill thus drawn, and will credit it in your accounts as so much money received from the collector of New York.

I am, respectfully, sir, your obedient servant,

A. J. DALLAS.

JEDEDIAH HUNTINGTON, esq.,
Collector New London.

Deposition of E. Leffingwell.

Elish Leffingwell deposeth that he was conversant with the business of Elisha Tracey, esq., deputy commissary; that he was knowing to the fact, that said Tracey, during the summer 1814, purchased of sundry persons in Providence and Boston, sundry articles of supplies for the army on his credit, which was refused on the credit of the government, amounting to fifteen or sixteen thousand dollars, which he paid interest for until January, 1815, and that said Tracey was obliged to pay in specie or paper of such banks as paid specie for their paper, and that he was knowing to said Tracey's paying the usual premium on said paper; and further the deponent saith not.

ELISHA LEFFINGWELL.

DECEMBER 20, 1815.

NORWICH, NEW LONDON COUNTY, *ss*:

Personally appeared before me the above named Elisha Leffingwell, and made oath to the truth of the foregoing statement.

GEORGE PERKINS,
Justice of the Peace.

D. Sheldon to E. Tracey.

SEPTEMBER 18, 1815.

SIR: Your letter of the 11th instant was received yesterday. The treasury notes were sent to you from the Register's office, on the 12th instant, and doubtless have reached you before this time. There was no delay in this business at the treasury. But three days were consumed (one of which was Sunday) in carrying it through the forms here, including the making out and preparation of the treasury notes.

I am, respectfully, sir, your obedient servant,

D. SHELDON, JR.

ELISHA TRACEY, Esq.

Deposition of R. H. Nevins.

STATE OF NEW YORK, *ss*:

Russell H. Nevins, of the city of New York, stock and exchange broker, being duly sworn, saith, that prior to October 1, in the year of our Lord one thousand eight hundred and fourteen, and since

that time down to the present time, he hath been and still is engaged in the business of buying and selling specie; that in the said month of October, the premium for specie and for specie paper payable in New York paper, varied from six to twelve per cent; in the month of November immediately following, from thirteen to seventeen per cent.; in the month of December following from sixteen to seventeen per cent.; and in the month of January, one thousand eight hundred and fifteen, from twenty to twenty-three per cent. And further this deponent saith not.

RUSSELL H. NEVINS.

Sworn this 2d day of January, 1816, before
PETER WILSON, JR.,
Notary Public.

J. Roberts to E. Tracy.

KEESVILLE, *Pennsylvania, May* 17, 1823.

SIR: Your letter in relation to your claim on the government reached me a few days ago, and unavoidable engagements has denied me the opportunity of earlier acknowledging it. I regret that at this moment I have not beeen able to find your letter among those unanswered on my table, nor to lay my hands on it. I think it better not to delay my answer until I recover it. On perusing it, I thought your representation of what took place when your claim was before the Senate in the main correct. My memory did not bear me out in all the circumstances you recounted. I recollect well I thought some part of your claim founded in strong equity, and believed it would have been fairly allowable by a regularly constituted Secretary of the Department of War. I thought at that time that its allowance by Congress was unlikely, because it might go to establish a precedent that would give form to claims less equitable—an apprehension at that time strongly entertained by many members. Fearing for you an unfavorable decision, I offered you my opinion for its withdrawal at that time. The precise features of your claim are not now present to my recollection, and I cannot say with any clearness whether the strong equity I have spoken of belonged to the whole or only to a part of it; some part, however, I am clear I thought entitled to relief. If saving this can be of service to you, it will afford me the truest gratification. Not having your letter to refer to, I am not able to determine if I could say more. Wishing for you that justice which all deserve who lent their substance to the public use in the late war, more especially in its gloomiest period, I am, most respectfully, your friend and servant,

JONATHAN ROBERTS.

General TRACEY.

Captain Whiley's certificate.

NORWICH, *Connecticut, September* 1828.

During the late war, under an appointment from the United States, I performed the duty of a purchasing commissary in military district No. 2, for which I received the compensation allowed for those services by law; during the same period, there being no other officer in that district of and belonging to the Department of War, I performed all the duty of the Quartermaster's department, the Ordnance department, and, as agent for fortifications and as issuing commissary expended all the money for those various purposes. For these extra services I have claimed a compensation, the admissibility of which has been doubted by the officers of government, under an idea that an officer can receive compensation for only one office; whereas I take it to be every day's practice to pay for extra services. I am informed that during the late war you were an officer receiving pay and emoluments, and at the same time received a commisson on moneys which passed through your hands as military agent for fortifications and other purposes. In case I am correctly informed, will you have the goodness to make a certificate, and affix your signature to it, at the bottom of this communication, and return it to me, certifying what was your rank in the army on which you received your monthly pay and emoluments? and, if so, whether at any time you received a commission as military agent for moneys disbursed by you, for what object the money was disbursed, and to what amount of commissions you had allowed you, together with any other facts you may deem important to me; have the goodness to state the practice, so far as you know it, of allowances for extra services? Be pleased, on any future occasion, to command my services in return.

Yours, &c.

ELISHA TRACEY.

RICHARD WHILEY, Esq.

NEW YORK, *September* 20, 1828.

DEAR SIR: I have to acknowledge the receipt of your letter, and do not hesitate to give the certificate you require of me.

With great respect, your obedient servant,

R. WHILEY.

ELISHA TRACEY, Esq.

NEW YORK, *September* 20, 1828.

This may certify that during the great length of time I was in the army it was the usual custom of the service to allow extra pay to officers for the performance of extra duty, which was not connected with the usual duties of the department in which they were serving.

R. WHILEY,
Late Captain of Artillery.

P. S. I was allowed extra pay for the superintendence of fortifications, exclusive of my pay in the line and as assisant military agent.

R. WHILEY.

Secretary of War to the Committee on Claims.

WAR OFFICE, *March* 23, 1830.

SIR: In answer to your inquiry of yesterday, I have the honor to state that Mr. Tracey was appointed agent for fortifications in June, 1808; that in January, 1809, he was directed to perform the duties of the Quartermaster's department; and that in July, 1811, he was instructed to perform the duties of agent of the Ordnance department; and in July, 1812, he was appointed a deputy commissary of purchases.

I have the honor to be, &c.

JOHN H. EATON.

Hon. ELISHA WHITTLSEY,
Chairman of the Committee of Claims.

I certify the above is a true copy.

A. RANDOLPH.

Differences on settlement of the accounts of E. Tracey for commissions for 3d quarter of 1814.

Balance due him per official statements		$42,373 28
Balance claimed per his statement		40,685 08
Difference		1,688 20
Arising as follows:		
Amount admitted in official statement as pay, forage, and subsistence, as acting assistant deputy quartermaster general from July 1, 1812, to September 30, 1814, not embraced in his statement	$1,789 20	
From which deduct this sum overcharged in entering voucher 1, T. Daboll's account in abstract No. 4, purchases for ordnance	100 00	
This sum overpaid G. Mix for cutting clothes, voucher 39, abstract No. 1	1 00	
	101 00	
Difference		1,688 20

Difference arising on settlement of the accounts of E. Tracey for commissions for the 4th quarter of 1814.

Balance claimed by him per his statement	$14,593 52
Balance due him per official statements	14,442 09
Difference	151 43

Arising as follows:

Amount over-credited him on settlement of 27th December, 1814, for forage, and brought to his debit in the present statements.....	$152 23	
Amount overpaid B. Harris for 1,450 bushels coal, voucher, abstracts of ordnance.....	1 00	
From which deduct amount short charged entering voucher 18, in abtract for clothing No. 1.....	80	
Difference.....		$151 43

Difference arising on settlement of the accounts of E. Tracey for commissions for 1st quarter, 1825.

Amount due him per official statements.....		$8,642 07
Amount claimed per his statement.....		8,462 78
Difference.....		179 29

Arising as follows:

F. Shephard's account for 33 military coats, not embraced in his statements, but admitted the official statement, Mr. Tracey engaging to procure Mr. Shephard's receipt, and to forward it without delay.....	$231 00	
From which deduct amount overpaid William Crooke for hospital stores, voucher 1, abstract No. 4.....	37	
Jesse Brown's account for use of room and firewood for Mr. Tracey, as agent of fortification, different times at New London, between July 1, 1814, and March 31, 1815; inadmissable....	51 34	
	51 71	
Difference.....		179 29

JULY 1, 1815.

Difference arising on settlement of the account of E. Tracey for second quarter of 1815.

Amount claimed per his statement.....	$6,678 53
Amount due him per official statements.....	5,977 25
Difference.....	701 28

Amount overcharged for his compensation, a commission of 2½ per cent. on his disbursements amounting to $1,798 72, $2,000 charged	201 28
Amount of one year's clerk hire deducted, in consequence of of the payments made the clerks for services for inspecting	500 00
Difference	$701 28

IN SENATE OF THE UNITED STATES.—*February* 18, 1828.

Mr. RUGGLES, from the Committee of Claims, to whom was referred the petition of Elisha Tracey, late deputy commissary general of purchases, report:

That the petitioner was appointed a deputy commissary general of purchases on the 15th day of July, 1812, and continued to discharge the duties of the said office until the 30th of June, 1815, for which services he has received his regular pay as allowed by law. While in the performance of these duties, he was required by the government to perform additional services in the ordnance, fortifications, and quartermaster's department, and as issuing commissary, there being no officer stationed in that quarter to perform those duties, for which he has received $1,637 97, which sum was ordered to be paid to the petitioner by the Secretary of War. Upon a full examination of the case, and considering the various and arduous duties performed by the petitioner, the committee are of opinion that he is entitled to further remuneration, and believe it would be no more than justice to allow him the full pay and enoluments of an issuing commissary, in full satisfaction for those various services. The petitioner's claims are similar to those of Amasa Stetson, of Boston, and Samuel Russell, of New York, for whose relief laws have heretofore been passed. The pay of an issuing commissary, together with the emoluments, for the three years during which the petitioner served, amounts to $5,635, from which is to be deducted the sum paid to the petitioner by order of the Secretary of War, $1,637 97, leaving a balance due of $3,997 03.

The petitioner claims the reimbursement of money advanced by him for the payment of interest to the banks, for moneys loaned by him for the benefit of the government, and applied solely for its use. The committee are of opinion that this constitutes a just claim against the government, and ought to be paid to the petitioner. It appears by the evidence offered to the committee that the sum of $348 25 was paid for interest as aforesaid; the aggregate amount, therefore, for which the committee report a bill, is $4,345 28, in full for all claims submitted by him. The other items of claim prayed for by the petitioner, the committee are of opinion ought not to be allowed.

IN SENATE OF THE UNITED STATES.—*February* 18, 1828.

Mr. RUGGLES, from the Committee on Claims, reported the following bill; which was read, and passed to a second reading.

A BILL FOR THE RELIEF OF ELISHA TRACEY.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Elisha Tracey, of Connecticut, out of any moneys in the Treasury, not otherwise appropriated, the sum of four thousand three hundred forty-five dollars and twenty-eight cents; being for interest on moneys advanced by him for the United States, and for services rendered in the ordnance, fortifications, and quartermaster's department, and as issuing commissary.

Evidence offered on the part of the United States.

Report 354, House reports, 21st Congress, 1st session, April 10, 1830.

Mr. Tracey to the Committee on Claims; remarks on the foregoing report, April, 1830.

Mr. Tracey to the Chairman of the Committee on Claims, June 17, 1830.

The Third Auditor to the Deputy Solicitor, July 20, 1858, enclosing three papers.

ELISHA TRACEY.

APRIL 10, 1830.—Read, and, with the bill, committed to the Committee of the Whole House to-morrow.

Mr. MCINTIRE, from the Committee on Claims, to which was referred the bill from the Senate, for the relief of Elisha Tracy, made the following report:

The Committee on Claims, to which was referred the bill from the Senate for the relief of Elisha Tracey, report:

That the petitioner was appointed a deputy commissary general of purchases on the 15th day of July, 1812, and continued to discharge the duties of that office until the 30th June, 1815, for which services he has received his regular pay as allowed by law. Previous to this time, he had been in public service as agent for the fortifications and ordnance, which duties he continued to perform, together with other duties in the Quartermaster's department, and some other analogous duties, and as issuing commissary during the time he was deputy commissary general of purchases, and six months after. For these duties, he was paid the pay and emoluments of an assistant deputy quartermaster

general, from the 1st July, 1812, to the 30th September, 1814; and the same for the last six month after his pay as deputy commissary general of purchases stopped. This allowance was made him by the special orders of the Secretary of War, as an extra allowance for extra duties in the several capacities in which he served, and not as an officer holding that office. He was, during that time, allowed fifteen hundred dollars for clerk hire, five hundred of which was paid to his clerks as inspectors of clothing.

The Committee of the Senate, in their report, were of opinion that this allowance, by the Secretary of War, was not a full and adequate compensation for his arduous services; and in the bill have provided for his relief the difference in pay between an assistant deputy quartermaster general and that of an issuing commissary, for three years.

This committee, considering that the allowance for extra services was made by the Secretary of War with a knowledge at the time of the extent of the petitioner's services, and all the circumstances attending them, is of the opinion that, at this day, and at best with but partial view of the case, it would be unsafe and improper to revise the Secretary's decision. The Secretary was surely competent to judge of the value of extra services, especially as he was familiar with what was extra and what ordinary services in similar cases. It is a mere matter of judgment, and to revise this, after a lapse of fifteen years, would not be advisable or justifiable, unless there was evidently a great palpable error. Indeed, the government can never know when it has discharged its obligations to its agents for their services if the decision of its highest officers is to be appealed from in all cases, and unlimited as to time. It is believed, and the experience of every man who took any part in the public transactions at that period is appealed to to sustain the belief, that scarcely an officer of the government, of any grade, was not frequently called on to discharge duties not strictly within the range of duties, upon a rigid construction of them, few of whom ever claimed or received any extra pay. If all these transactions are at this day to be called up, there will be no end or limit to legislation on this subject. To be perpetually legislating on these subjects by special laws for relief, renders standing laws and provisions for fixed compensation, and the establishment of executive and accounting officers, nugatory.

The committee do not perceive any gross injustice in this case that would justify legislative interference. The petitioner no doubt discharged the duties assigned him with promptitude and fidelity, for which he has received a compensation of about two thousand dollars per annum in the grade he held, and the pay and emoluments of a captain of infantry for extra services. It may be, some other officers fared better; but it is believed most others were obliged to be satisfied with the pay and emoluments of but one office, whatever services they might have performed.

The other item embraced in the bill is the sum of $348 25, advanced by the petitioner for interest on money loaned at banks for the use and benefit of the government.

This committee has looked into the evidence of this, and all that

can be found are two certificates of the cashiers of Norwich and New London banks, that the petitioner had accomodation at those banks of certain sums, for certain periods, which, in their opinion and belief, was for the use and benefit of the United States. To say nothing of the objection, that these are mere certificates and not under oath, and not such evidence as is required by this committee to substantiate claims before it, this evidence is too loose and uncertain for sound, cautious legislation, in matters of so long standing.

The petitioner may have rightful claim for this and other items in his petition and papers; but, in the opinion of the committee, he has failed to adduce that unequivocal proof that is requisite to entitle him to relief.

The inference the petitioner would have drawn, that because, at the several periods when his accounts were stated, balances were found in his favor, he was in advance to the United States out of his private funds, for which he ought to have interest, does not follow. At that period, it is well known that disbursing and purchasing officers frequently, when out of funds, and the exigency of the service required, or a favorable opportunity presented, made purchases, took receipts, and gave due bills, to be paid when in funds. In this way they appeared, on the face of their accounts, to be in advance to the United States, when in point of fact it was the sellers of the articles purchased that were so. How far, or if at all, this was the case with the petitioner, does not appear from his documents.

The petitioner has received as purchasing commissary.....	$5,724 95
Extra pay as assistant quartermaster general.....	1,637 97
Pay as assistant quartermaster general, after his office as commissary had ceased.....	387 20
	7,750 12
Clerk hire.....	1,500 00
	9,250 12

The Committee of Claims of the Senate, in its report of this case, on which this bill is founded, refer to the case of Amasa Stetson for a precedent. On recurring to that claim, it appears a bill was, on the 5th of May, 1824, passed for his relief, for a specific sum, as compensation for services of various descriptions, interest on money advanced, and warrants issued in his favor. In the report of the Senate on the subject of that bill, it is stated that for nearly four years' service, of great value and responsibility, he had received only $5,444 74, and proposed to give him the pay of an issuing commissary for three years three months and a third, amounting to $3,618 67. In the House the bill was altered in its whole phraseology, to embrace pay for services and interest on money and warrants, and by which it does not appear how much was allowed for each. In that case, Stetson had not received anything for extra services, nor does it appear he received anything for clerk hire. The bill was passed under the peculiar circumstances of that case, and cannot be a precedent, as to amount, in

any other case. Even if allowed, the amount named in the report of the Senate, it did not, when added to what he had before received, amount to so much as the petitioner in this case has received, considering the difference in the term of service and the clerk hire.

Stetson's pay as purchasing commissary.....	$5,444 74
Extra, as issuing commissary, if received	3,618 67
	9,063 41

In respect to interest paid by the petitioner for money necessarily used in the public service, if any such has been paid, or for interest on moneys actually advanced by him necessarily in the purchases he made, and benefit of which last purchases the United States has enjoyed, if any such have been advanced, the committee give no opinion to exclude the petitioner, should he hereafter satisfactorily show that he has paid such interest or made such advances. The proofs adduced do not satisfy the committee on this part of his claim.

The committee therefore recommend the adoption of the following resolution:

Resolved, That the bill from the Senate for the relief of Elisha Tracey be rejected.

To the gentlemen of the Committee of Claims of the House of Representatives:

GENTLEMEN: Since my return home my friends have sent me your report on the bill from the Senate for my relief; permit me to make to you some remarks upon it. Your report states that I performed the duties of five different officers, during the three years, less fifteen days, of my being a deputy commissary general of purchases, and for six months after. The duties of the other four, for which was allowed and paid to me the full compensation of a deputy commissary general of purchases and an allowance for extra services, by the Secretary of War, of $1,638; for the other four offices, and subsequently, $387, making together about $2,025 for the performance of the duties of these offices for three and a half years; being less than six hundred dollars per annum for performance of the duties of four offices. Can you for a moment believe this a reasonable compensation? Can you believe the Secretary of War thought so? By refering to the written order for allowance by the Secretary, you will see it expressly states the pay, &c., of a deputy quartermaster general. This was the extent of his power; he would have allowed a higher grade, but that would require the consent of the Senate. He never did suppose he had made a full compensation; but, for argument's sake, suppose I am wrong in this: can you, can Congress suppose this a reasonable compensation in time of war? If not, why then permit me to lay my head upon the bosoms of my political fathers, and ask from them that justice and equity that my services deserve?

By the answer of the Secretary of War to your inquiries you have the evidence of my appointment to the various offices; and be it re-

membered that during the whole war, I was the only officer in military district No. 2 to perform these duties, whatever may have been insinuated to the committee, except some short time a militia officer, attached to militia only. Was it proper to charge to my account of compensation $1,500 clerk hire, when the official statements before you showed that I received only $1,000—a sum greatly below what every man will know I must have expended in more than three years? Was it proper to take into consideration the sum allowed for clerk hire at all? The committee have been led into many errors in comparing my case with Mr. Stetson's. They have stated that it does not appear that any allowance was ever made to Mr. Stetson for clerk hire. By re-examining his accounts it will appear he was allowed $1,500, whereas the allowance to me was only $1,000; when in fact every man knows four times the sum may with more ease be expended, in such a place as the city of Boston, than can be with the same labor in a small town like the place of my residence. Again, the report has stated the amount for relief of Mr. Stetson to be $3,618 67, when in fact the bill for his relief that passed was for $6,215. What might have been the phraseology of the bill of the House of Representatives I know not, neither is it material in his or my case: the amount constitutes the great object. He claimed interest on warrants; I did on official settlements: they are both the same thing. Warrants were also drawn in my favor, and lay in the office. Is it not a little singular that the errors of the committee should have swelled my allowances and stated Mr. Stetson's so much less than they were? Far be it from me to intimate that the committee intended to present the facts so as to mislead the House, but I put it to the committee whether the facts, as stated by them, will not have such an effect? And had the committee been kind enough to have permitted me to see the report before its going to the House, I certainly could have convinced them that in many respects it was wrong in material facts. Mr Stetson was at the War Office allowed interest on the certificate of Wm. Gray and others, amount not precisely remembered, but believed to be $1,200; to which add his pay as purchasing commissary, $5,444 74; allowed him at the War Office for clerk hire, $1,500; bill passed for his relief in 1824, $6,215: according to the principles adopted by the committee in the Tracey case amounting to $14,359 74. So far as I have been acquainted with legislation the rule has been to present a petitioner's case in as fair a view as the circumstances will warrant. Will not therefore the honorable committee review this case, and change the nature of their report?

Respectfully, &c.,

E. TRACEY.

NORWICH, CONN., *April*, 1830.

NORWICH, CONNECTICUT, *June* 17, 1830.

SIR: My mind has dwelt with so much unexpected disappointment upon the course taken by the Committee of Claims of the House of Representatives respecting my claim, that I am desirous of asking of

you some explanation, if you are willing to give it. The government I certainly know are truly and justly indebted to me a sum much larger than was provided for in the Senate's bill, and if they would permit me to call them into a court of law I would never trouble Congress respecting it. The committee of the Senate, when my case was before them, made, what I suppose is the usual practice, an application to the different offices for information; when that was obtained they invited me into their room, to compare my claim with the report and to explain my case. I consider the department reports representing the government there, always in their reports rather bearing against a claim, and the petitioner representing himself—the committee sitting in chancery between the parties; and so far as I have been acquainted with legislation a committee not clearly against a petitioner has always considered it proper to report in his favor, that his friends may explain in the House—his success being dependent on the adverse party sense of justice and liberality; and in cases where difficulties occur, the practice I know to be with other committees of your House to state them to the petitioner, and see if he can explain or remove them. The reports you obtained from the department rather strengthened than weakened my claim; and that, with the circumstance of the bill in my favor passing the Senate without a dissenting voice, left on my mind no suspicion of a report against me. Had your committee been kind enough to have admitted me into their room, when I several times requested it, and have showed me their report as drawn up, I could have convinced them of its incorrectness. I had understood the gentleman who purports to have drawn the report, that they should probably adopt the Senate's report. I feel surprised that the figures in the report making up the sum allowed me should state fifteen hundred dollars for clerk hire, when the department reported it at one thousand. Why take any notice of the allowances for clerk hire? The committee must have known that I must have expended a much greater sum; in fact, had on an average three clerks during the war, and the clerk hire allowed, and the extra allowance, as it is called, would not have paid them. Why notice three hundred and eighty-seven dollars allowed me long after peace took place, for continuing the work, &c., in a public arsenal? As well might you charge me for compensation I might be receiving at this time for services rendered the public at this time. But when I look at the stated compensation of Amasa Stetson, put into the report to compare with mine, I am still more astonished. First, that it does not appear that he had any clerk hire allowed him, when I know that he had fifteen hundred dollars, and that his expenses for clerk hire were less than half mine, and necessarily so. When a copy of the bill that passed in favor of Stetson was before your committee, and showed the sum to have been between six and seven thousand dollars, by what calculation of figures could it have been stated at less than four thousand? And, again, the same remarks may be made as to the time of service. The fact was, we were both appointed about the same time, but I continued in service the longest. These various mistakes convince me that the committee did not have the proper view of my claim that they would have had, had they permitted me to explain to them before they made

their report; which you may rest assured is very unjust in its effect on me. I knew that I had one personal enemy on that committee, that would insinuate objections in secret; but I placed my reliance on the long acquaintance and friendship existing with you to counteract its effect, by giving me an opportunity to counteract it by explanation. Far be it from me to suggest that I expected from you any departure from your duty to the government out of personal friendship to me. Your character for vigilantly examining claims precludes any possibility of such a thought, as well as your integrity; but I do confess that I did expect that I might, from our acquaintance and friendship, have been informed of any objections to my claim, so as to have given me an opportunity to have removed them, and at any rate to have prevented so incorrect a statement of facts; and in this idea and expectation I am not aware that there is anything wrong. And may I not now as a friend and a citizen ask you to review these circumstances, and as an individual give me your views and opinion respecting my claim? One thing, my friend, I must say to you, that committees never should wrap themselves in mystery and privacy. I mean nothing wrong; but the citizens are entitled to kindness and frankness, and I trust you feel on this subject as I do. Your committee criticises upon the proof respecting the interest paid banks, about three hundred and forty-eight dollars, less than two hundred dollars at a place; is it possible that an official certificate of a cashier is not good for that amount? One of your committee knew the handwriting as well as his own. In the Senate the proof of this item was called for and read publicly, and the Senator calling for it pronounced it satisfactory. What right have I to compel them to swear, and shall I lose this little sum on this account? Besides, one of them is dead, and this was well known to one of your committee.

ELISHA TRACEY.

Third Auditor to Deputy Solicitor.—Filed, July 20, 1858.

TREASURY DEPARTMENT,
Third Auditor's Office, July 15, 1851.

SIR: I yesterday received yours of the 13th instant, stating that in March, 1830 a report was made by this office to the chairman of the Committee on Claims upon the claim of Elisha Tracey, in which the committee was informed that the Sectrary of War had allowed said Tracey the sum of $1,637 97 for his services, &c., that, if possible, you would like to lay before the Court of Claims a copy of the account presented by Mr. Tracey, the decision of the Secretary, the account stated at the treasury, and all the accompanying papers.

I accordingly in reply transmit herewith the copies of the following papers, to wit:

First. A statement of the compensation received by said Tracey from the 15th of July, 1812, the date of his acceptance of the appointment of deputy commissary, to the 30th of June, 1815, when he ceased to disburse as such, amounting to $5,724 95, with an allow-

ance by the Secretary of War on the 21st of December, 1814, for extra duties performed by him in the Quartermaster's department, from July 1, to September 30, 1814, being the pay and emoluments of an assistant deputy quartermaster general, of $1,637 97; also an allowance in the same capacity by the Sercetary of War, in January, 1816, for disbursements out of the line of his duty, from the 1st of July to the 31st of December, 1815, of $387 20, amounting altogether to the sum of $7,750 12.

Second. A report to the Secretary of War, by Tobias Lear, accountant of the War Department, of the 16th of December, 1814, upon which the Secretary made the allowance of $1,637 97 before referred to; and

Third. An *unfinished* report of the Third Auditor upon an account of Elisha Tracey, presented on the 11th of February, 1828, in which he claimed to be due him, for various services, as an assistant deputy quartermaster general from the 1st of July, 1812, to the 31st of December, 1815, a balance of $1,036 53. The reason why this report was not finished is explained by the following endorsement upon one of the papers, to wit: "On the 11th of February, 1828, Mr. Tracey presented an account claiming additional allowances as assistant quartermaster, amounting to $1,036 53, which he withdrew on the 12th of February, 1828, (previous to the Third Auditor finishing a report thereon,) stating that *'he was satisfied he had no claim to further allowances.'*" And, further, by the following endorsement upon said unfinished report, to wit: "Before this report was finished, Mr. Tracey called at the office, and was shown by Mr. Hagner the former accounts, and explained to him the principles of the allowances, with which Mr. Tracey was *satisfied*, and *withdrew his acconnts* presented yesterday," February 12, 1828.

Your attention is respectfully called to the 2d, 3d, 5th and 7th sections of the act entitled "an act to establish a Quartermaster's department, and for other purposes," approved March 28, 1812, which prescribes the duties and fixes the compensation of assistant deputy quartermasters general and deputy commissaries general, to show that Mr. Tracey's accounts for all the compensation due him were settled and paid in accordance therewith.

I am, very respectfully, your obedient servant,

ROBT. J. ATKINSON, *Auditor.*

J. D. McPherson, Esq.,
Deputy Solicitor Court of Claims, Washington, D. C.

Statement of compensation received.

[Not enclosed in Third Auditor's report of July 15, 1858.]

No. 1.

Elisha Tracey received his compensation as deputy commissary from the 15th of July, 1812, the date of his acceptance, to the 30th of June, 1813, at the rate of $2,000 per annum—his disbursemnts as such in that period exceeding that sum, (Account No. 3443,)..... $1,926 23

Received his compensation as deputy commissary from the 1st of July, 1813, to the 30th of June, 1814, a commission of 2½ per cent. exceeding this sum, (No. 4562,).....		$2,000 00
Received a commission of 2½ per cent. on the amount of his disbursements in the 3d and 4th quarters of 1814 and 1st and 2d quarters of 1815, (No. 5393,).....		1,798 72
Compensation as deputy commissary.....		5,724 95
He received an allowance by order of the Secretary of War, in consequence of extra duties performed by him in the Quartermaster department, from the 1st of July, 1812, to the 30th of September, 1814, the pay and emoluments of an assistant deputy quartermaster general, (No. 4723,)..		$1,637 97
He received an allowance by order of the Secretary of War, for disbursements out of the line of his duty, the pay and emoluments of an assistant deputy quartermaster general from the 1st of July to the 31st of December, 1815; a part of these disbursements were made prior to July, 1815, and about two-thirds thereafter, (No. 6495,)		387 20
		2,025 17

Recapitulation.

From the 15th of July, 1812, date of acceptance, to June 30, 1815, when he ceased to disburse as deputy commissary, 3 years, less 15 days.....		$5,724 95
For extra services in the quarter master department from the 1st of July, 1812, to the 30th of September, 1814, special order of the Secretary,	1,637 97	
For services, disbursing after he ceased to disburse as deputy commissary from the 1st of July to the 31st of December, 1815, allowed by the secretary.....	387 20	
		2,025 17
Total from 1st of July, 1812, to 31st of December, 1815,		7,750 12

Truly copied from original on file in this office.

No. 2.

Accountant's report.

(Enclosed in Third Auditor's report of July 15, 1858.)

DEPARTMENT OF WAR,
Accountant's Office, December 16, 1814.

Agreeably to the request of the honorable the Secretary of War, the accountant of the War Department has the honor to state that, pre-

vious to the establishment of purchasing commissaries, Mr. Elisha Tracey was appointed agent of fortifications in the State of Connecticut, during which time he was allowed, by the then Secretary of War, a commission of four per cent. on the public moneys disbursed by him.

After Mr. Tracey was appointed deputy purchasing commissary he continued to charge the commission of four per cent. on disbursements made by him in the Quartermaster's and Ordnance departments and on fortifications, besides the commission of 2½ per cent. on his other disbursements, where the said commission did not exceed $2,000 per annum, the maximum allowed by law.

The accountant did not admit Mr. Tracey's charge of four per cent., as before stated, after he was appointed deputy purchasing commissary, upon the ground that the law did not grant any allowance for disbursements of public money by a deputy purchasing commissary beyond the sum of $2,000 per year. Although other deputy purchasing commissaries have made disbursements, (but not to a considerable amount,) out of what has been considered the immediate line of their duty, no additional allowance has been claimed by or made to them. Mr. Tracey has paid (by roll) the wages of persons employed by him in making gun carriages, which does not appear to have been done by any other purchasing commissary; and has made disbursements for the Quartermaster's department on accounts which are excepted from the duties of a purchasing commissary by the regulations of the War Department; but to ascertain the precise amount of these would require a revision of his accounts.

The accountant would beg leave to draw the secretary's attention to the fifth and seventh sections of an act passed on the 28th of March, 1812, "to establish a Quartermaster's department, and for other purposes:" and likewise to the regulations of the War Department under the head of "purchasing department," which may enable him to determine whether Mr. Tracey should receive a further compensation for his services than what is allowed by law to deputy commissaries of purchases.

TOBIAS LEAR.

The Hon. THE SECRETARY OF WAR.

Truly copied from original on file in this office.

No. 3.

Copy of unfinished report, enclosed in Third Auditor's report of July 15, 1858.

Report of the Third Auditor on the account of Mr. Elisha Tracey, claiming additional compensation for services in making disbursements out of the immediate line of his duty, as deputy commissary.

Mr. Tracey presents his account in the following form:

Dr. the United States to Elisha Tracey, to pay and emoluments of an assistant deputy quartermaster general, from July 1, 1812, to September 30, 1814, is 2¼ years	$2,503 50

From which deduct the sum allowed as per official settlement for 3d quarter of 1814.....	$1,789 20	
Deduct from the last sum forage for horse, charged back as inadmissible in official statement for 4th quarter, 1814.....	151 23	
		$1,637 97
		865 53
To pay and emoluments of an assistant quartermaster general from July 1, 1815, to January 1, 1816, one-half year.....	558 00	
From which deduct the sum allowed on settlement of December 31, 1815.....	387 00	
		171 00
The sum claimed as balance due being.....		1,036 53

On the settlement of Mr. Tracey's account as deputy commissary for disbursements to the 30th of September, 1814, a claim then made by him for extra compensation for his services in making disbursements in the Quartermaster department, was submitted to the Secretary of War for his decision, who directed the accountant of the War Department to allow the pay and emoluments of an assistant deputy quartermaster to the time, but that no further compensation of the kind was to be allowed him. According to this decision Mr. Tracey was allowed the pay and subsistence of an assistant deputy quartermaster from the first July, 1812, to the 30th September, 1814, including forage for the time in the above period; which assistant deputy quartermasters were by law entitled to such allowance, as will be seen by reference to the account and documents herewith transmitted marked A. Mr. Tracey after ceasing to disburse as deputy commissary, for which he had received compensation to the 30th June, 1815, made disbursements on account of the construction of gun carriages, repairs of fortifications, &c., between the 1st July and 31st December, 1815, on the amount disbursed in this period, the usual commission of 2½ per cent. allowed to deputy commissaries, would not exceed $150; and as Mr. Tracey had charged for his compensation one thousand dollars a report on the subject of his compensation was made by the accountant of the War Department, and submitted to the Secretary, who directed the allowance of the pay and emoluments of an assistant deputy quartermaster, for the services he performed since the 1st July, 1815, which allowance was made to Mr. Tracey, as will be perceived by reference to the accompanying accounts and reports marked B.

Assistant quartermasters were not allowed forage after 3d March, 1813, and under the regulations of the War Department, money in lieu of fuel and quarters was not admissible. I consider the account as closed, the allowance being an extra one, and no doubt when settled was according to the understanding of the proper authority.

Truly copied from original on file in this office.

IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, administrator of ELISHA TRACEY, *vs.* THE UNITED STATES.

PETITIONER'S BRIEF.

Statement of facts and claims of petition.

Elisha Tracey, late of Norwich, deceased, prior to the last war with Great Britain, was appointed, under the direction of the President of the United States, *an agent for fortifications*, and soon afterwards was directed to perform the duties of the *Quartermaster's department* within the district in which he resided. In the month of June, 1811, he was directed by the Secretary of War to erect a public arsenal for manufacturing travelling and gun carriages, and other implements of war, when he employed a large number of artificers during the whole period that the war continued, as an *agent of the ordnance department*. In the year 1812, soon after the declaration of war, he was appointed a *purchasing commissary*. During the whole period of the war he continued to perform, in military district number two, the duties of the said four offices, there being no other person in said district appointed or acting in the discharge of said duties. For all said services compensation was, at the time, claimed by said Tracey; but, with the exception of a small allowance of $1,637 97, made to him at one time by the Secretary of War, the only compensation allowed him was that of a purchasing commissary. During the same period of time there were four distinct officers in other districts of the United States in the discharge of these separate duties, and receiving compensation therefor. During the same period of time, in addition to the foregoing, he performed the duties of an *issuing commisary*. The duties imposed upon him in the discharge of these offices were arduous and responsible, and more than half a million of dollars were disbursed by him on account of the government during said period; all of which services were most faithfully performed, and to the satisfaction of the government; and the petitioner claims that the said Tracey was entitled to receive the compensation appropriate to the several offices, and for which no adequate compensation has been made.

The petitioner further states, that, not being furnished with funds by the United States, between the 1st day of January and the 27th June, 1813, he advanced his own funds for the use of the United States, by borrowing money from the banks at Norwich and New London, on which he paid interest amounting to the sum of $348 25.

Also, that the said Tracey having received a draft from the Treasury for the sum of $20,009, and the same having been protested, he paid interest on the same from the 30th September to the 31 December, 1814, amounting to the sum of $300.

The treasury notes and other funds received by said Tracey from the United States, were at that time so far depreciated in market that, in order to convert the same into specie, there *was an actual loss of* $3,080, being for the difference of exchange for specie paid in Boston and Providence, and received in New York funds. It also appears

from the official statements of the Treasury Department that said Tracey was, at the different periods shown by the said accounts, in advance for a large amount to the United States, as will appear by said official statements and the accounts of said Tracey at the treasury. That the interest on said balances, as shown by said statements while the same continued, amounted to the sum of $1,604 37.

I. *Compensation as agent for fortifications, as acting quartermaster, and as agent for the ordnance department.*

From an official statement of the Secretary of War, the dates of his appointment to these offices appear. This is addressed to the chairman of the Committee on Claims, dated March 23, 1830, and is as follows, viz: (Rec. p. 20.)

"SIR: In answer to your inquiry of yesterday, I have the honor to state that Mr. Tracey was appointed agent for fortifications in June, 1808; that in January, 1809, he was directed to perform the duties of the Quartermaster's department, and that in July, 1811, he was instucted to perform the duties of agent of the ordnance department, and in July, 1812, he was appointed a deputy commissary of purchases."

The following official statement shows the disbursements made by Mr. Tracey in the discharge of the duties of these offices:

Statement exhibiting the disbursements made by Elisha Tracey in each year, and in the different offices he held, furnished in pursuance of a request from the Committee on Claims of the House of Representatives, dated 29th March, 1830, viz:

For the commissary department, on account of clothing, between 15th July, 1812, and 30th June, 1815—		
In the year 1813	$210,669 10	
In the year 1814	159,302 55	
To 30th June, 1815	4,635 60	
		$374,407 25
For the Quartermaster's department—		
On account of Quartermaster's department, July to 31st December, 1812	1,711 91	
In the year 1813	21,368 23	
In the year 1814	28,196 52	
To 30th June, 1815	1,576 40	
		52,847 06
On account of ordnance—		
July to 31st December, 1812	$6,069 63	
In the year 1813	19,546 67	
In the year 1814	18,276 11	
To the 30th June, 1815	4,372 24	
		$48,258 64

On account of fortifications—		
July to 31st December, 1812	1,815 29	
In the year 1813	18,017 69	
In the year 1814	9,351 85	
To the 30th June, 1815	661 67	
		30,346 50
On account of hospital department—		
July to 31st December, 1812	10 79	
In the year 1813	137 39	
In the year 1814	383 47	
To 30th June, 1815	604 01	
		1,135 66
On account of contingencies—		
In the year 1813	203 25	
In the year 1814	527 71	
To the 30th June, 1815	170 68	
		901 64

"The last two items for hospital department and contingencies were not embraced in the former statement furnished, not being in the call of the committee

"Subsequent to the 30th June, 1815, when Mr. Tracey's duties ceased as deputy commissary general, he made disbursements as an acting deputy quartermaster general, from July to December, 1815, as follows:

On account of clothing for beds due 1813	$87 87
On account of quartermaster's department	518 07
On account of ordnance	4,624 23
On account of fortifications	799 79
On account of hospital department	377 43
	$6,406 29

"PETER HAGNER, *Auditor.*

"TREASURY DEPARTMENT,
"*Third Auditor's Office, March* 29, 1830."

1. In relation to his duties in the Quartermaster's department.

The compensation of the lowest officer in this department, that of assistant deputy quartermaster, was fixed by law by the act of 28th March, 1812, (2 Stat., 696;) and in the second section, provided that "the assistant deputy quartermasters, when not taken from the line, shall be entitled to receive forty dollars per month, three rations per day, and forage for one horse," &c.

In relation to the services performed prior to the passage of this act fixing compensation, although the petitioner would not be limited to this compensation, in view of this legislative valuation of such service, he would probably be bound by it—no less sum, certainly, would be fixed.

The amount, then, to which he would be entitled on this principle can be readily determined. His appointment, as appears by the official statement of the Secretary of War, was dated in January, 1809, and he ceased to hold the office on the 30th June, 1815—a period of six and a half years.

The pay being $40 per month, and the forage for one horse eight dollars, being the rate adopted by law, gives the aggregate per month of $56; and per annum of six hundred and seventy-two dollars; and for the whole period of six and a half years, the amount to which he was by law entitled, is..... $4,408 00
From this deduct the amount received..... 1,637 97

Leaving due for services in the quartermaster's department..... 2,760 03

2. It also appears from the same official report that Mr. Tracey was appointed agent for fortifications in June, 1808, and continued in that office until June, 1815—a period of seven years.

3. And in July 1811, he was appointed to perform the duties of agent of the ordnance department to and after the 30th June, 1815—a period a few days short of four years.

There is no compensation fixed by statute for the services of persons holding these offices.

It would seem that something more than a mere commission should be allowed for the discharge of the duties of offices involving labors and responsibilities beyond the mere disbursement of money.

If, however, it be limited to a commission on the disbursements, the question arises as to the amount of commission to be allowed? It would seem that a commission of four per cent. should be allowed on his disbursements as agent of the Ordnance department, and for fortifications. Mr. Tobias Lear, in an official communication to the Secretary of War, dated December 16, 1814, says:

"Agreeeably to the request of the honorable the Secretary of War, the Accountant of the War Department has the honor to state that, previous to the establishment of purchasing commissaries, Mr. Elisha Tracey was appointed agent of fortifications in the State of Connecticut, during which time he was allowed by the then Secretary of War a commission of four per cent. on the public moneys disbursed by him.

"After Mr. Tracey was appointed deputy purchasing commissary he continued to charge the commission of four per cent. on disbursements made by him in the Quartermaster's and Ordnance departments, and on fortifications, besides the commission of 2½ per cent. on his other disbursements, where the said commission did not exceed two thousand dollars per annum, the maximum allowed by law.

"The Accountant did not admit Mr. Tracey's charge of four per cent., as before stated, after he was appointed deputy purchasing commissary, upon the ground that the law did not grant any allowance for disbursements of public money by a deputy purchasing commissary beyond the sum of $2,000 per year."

It thus appears that the allowance to Col. Tracey by the War Department as agent of fortifications was a commission of four per cent. on his disbursements. This was paid to him up to the time when he was appointed assistant commissary, which was in July, 1812.

The amount of disbursements subsequent to July, 1812, and to the 30th June 1815, by Col Tracey, on account of ordnance, was $48,268 64, and for fortifications, $30,346 50. A commission of four per cent. on these two amounts would be $3,144 20.

It would seem by a reference to the law prescribing the duties of the commissary department, and to the fact of the previous appointment of Col. Tracey as agent of fortification and ordnance, and to the duties pertaining to these offices, that this compensation was improperly withheld; and that at least the sum of $3,144 20 should be added to the balance due on Col. Tracey's salary as in the Quartermaster's department of $2,760 03; making for the two, the sum actually and legally due of $5,904 23.

II. In relation to the draft of $20,000 drawn by the Treasurer of the United States in favor of Colonel Tracey, upon the collector at New London. This draft was drawn at sight in favor of "Elisha Tracey, esq., deputy commissary, or order," signed by the Treasurer, and addressed to "Jedediah Huntington, collector of New London." The collector, by the order of the government, proposed to pay to Colonel Tracey this draft in treasury notes, at a great discount at that time. Colonel Tracey refused to receive these notes as money, and the draft was protested on the 4th of October, and subsequently paid, having been endorsed by Colonel Tracey to a third person.

On this matter, Mr. Dallas, then Secretary of War, says, in an official communication, January 20, 1816, (Rec., p. 11:)

TREASURY DEPARTMENT, *January* 20, 1816.

"SIR: The fact that the Treasurer's draft in your favor for $20,000 upon the contractor at New London, dated the 24th day of September, 1814, was protested, and that it was not paid until the 31st day of December, 1814, are incontrovertibly true. But in order to enable me to admit those facts, I have been under the necessity to examine the course of the transaction, as it appears from your letters and the records of this office, and I find that the draft was remitted to you in your official capacity as a deputy commissary; that you were offered payment in treasury notes, but declined it: and that you caused the draft to be protested, but still stated that it was an affair of the government."

This draft for $20,000 was paid in fact by a draft in favor of Col. Tracey, drawn by the collector at New London, on D. Gelston, collector at New York, for $14,500. This was done by the order of Mr. Dallas, Secretary of the Treasury, of the 22d December, 1814, (Rec., p. 17,) as follows:

"SIR: Mr. Tracey, who holds a draft of the Treasurer upon you for twenty thousand dollars, will shortly present it again for payment. You will be pleased to pay to him, in part of the same, the whole

amount of money in your hands other than treasury notes, and for the remainder you will draw and deliver to Mr. Tracey a bill on David Gelston, collector of the customs at New York, who is instructed to pay the same."

This order was paid on the 6th January, 1815, (Rec., p. 14,) by Mr. Gelston in funds which were from 20 to 23 per cent. below specie par, (Mr. Nevins's dep., Rec., p. 18.)

It thus appears, that in this transaction Col. Tracey was obliged, from his own funds, to pay the interest which accrued on the over due draft of the government, which was protested for non-payment because Colonel Tracey refused to receive payment in depreciated treasury notes. This was not only a direct loss of his, from no fault of his own, and an advance of the sum for the government which they were legally bound to pay, but the government itself had the benefit of it from the fact that the treasury notes offered in payment were themselves on interest, and the payment of the amount at the time would only place them in the same position as if the treasury notes had been received. The amount of this interest was $300.

The loss on the depreciated paper received in New York from Mr. Gelston at 20 per cent. discount on the $14,500, as appears above and from the testimony, was.....	$2,900
And adding said sum of $300.....	300
Making the aggregate loss on the $20,000 draft by the fault of the government....	3,200

It is apparent that nothing but the extreme necessities of the government at that time, and their entire inability to pay their debts, could justify such a transaction as is disclosed in relation to this draft; but it affords no reason in law or morals why they should not pay for the losses occasioned by their own fault entirely.

The views entertained as to this claim by two Secretaries—one of the Treasury and the other of War—is shown by the following, (Record, pp. 13, 14:)

"TREASURY DEPARTMENT, *March* 19, 1823.

"SIR: In reply to your letter of the 22d ultimo, I have the honor to state that I recollect distinctly that when you were in this place in the winter of 1816, you presented an account for interest, and for the difference between the funds received by you and specie, when you had been under the necessity of paying specie in Boston and Providence. I have no recollection of having offered any opinion in favor of the claim of interest upon balances from time to time due you on account, but I recollect distinctly that I was then of opinion that you were entitled to receive from the government the amount of interest you had paid to banks, or upon protested treasury drafts, and for any loss you had sustained in converting the funds placed in your hands by the government, when such conversion was necessary to meet the engagements you contracted on account of the government.

"For interest paid by contractors to banks, on account of the failure

of the government to make the advances stipulated by contract, allowances were made by my direction when in the War Department, and I should not have hesitated to make the same allowance to an officer of the government, had claims of that kind been presented after the decision was made.

"I recollect very distinctly advising you to waive those items in the settlement of your accounts at that time, under a belief that some general provision would be adopted in the course of the session which would prevent the necessity of resorting to any measure by the department which might be considered a departure from the established usage in the settlement of accounts.

"I remain, with respect, your most obedient servant,

"WILLIAM H. CRAWFORD.

"Col. ELISHA TRACEY."

Secretary of War to E. Tracey.

"DEPARTMENT OF WAR, *December* 19, 1828.

"SIR: I have examined, with some attention, the papers which you have presented to me in support of your claims against the government for a compensation beyond what you have already received, for services rendered and responsibilities incurred by you during the late war with Great Britain. I think that you have still some equitable claims, and were your case now an original one, it is probable that I should make you some further allowances, without imposing on you the necessity of a resort to Congress. But inasmuch as your claims have already been not only before the department, but also before Congress, I do not feel at liberty to interfere, but recommend to you to continue your application to Congress, as the only means by which you can expect to obtain relief.

"Very respectfully, your obedient servant,

"P. B. PORTER.

"ELISHA TRACEY, Esq."

III. The claim for money borrowed on the credit of Colonel Tracey for the use of the United States, in addition to the amount of his own funds advanced for the benefit of the government, and on which he actually paid interest at the local banks, is clearly just, and the fact is shown not only by the official certificates of the cashiers of those banks, but from the further confirmatory evidence showing the state of the accounts, and that large balances, on settlements at the Treasury, were found in favor of Colonel Tracey and against the United States. The amount of this item is the sum of $348 25.

IV. The interest on the balances due Colonel Tracey on the settlement of his quarterly accounts furnishes a just ground of claim. That interest should properly be computed to the present time, but is taken merely at the time and computed merely to the time when he was supplied with funds. The amount is $1,604 37.

As these were acknowledged balances on accounts settled by the government, it is not only clearly just that interest should be paid, but it is believed to belong to the class of cases in which, according to

the practice of the government, interest should be allowed. In relation to this allowance reference is also respectfully made to the consideration on this point contained in the brief of the undersigned in the case of Northrop, administrator of Langdon, *vs.* The United States, pending in this court.

V. In addition to the foregoing, it is respectfully contended that an erroneous construction has been given of the act of Congress of the 28th of March, A. D. 1814, (2 Stat., 696,) in relation to the compensation of an assistant commissary of purchases. It appears that for the third and fourth quarters of 1814 and the first and second quarters of 1815, he received only the sum of $1,798 72, being the amount of commission, at two and-a-half per cent., on the amount disbursed in those quarters, although, if the whole amount of his disbursements were considered, it would appear that they would exceed, for the whole time, the limit of $2,000 annually fixed by that act. Under these circumstances, he was clearly entitled to the full sum of $2,000 for these four quarters.

The considerations on this question are more fully presented in the brief in the case of Northop, administrator of Langdon, above referred to, to which reference is respectfully made.

The amount due by law for these four quarters is.....	$2,000 00
The amount actually paid is.....	1,798 72
Leaving a balance due.....	201 38

As the foregoing claims have been constantly demanded and urged, and pressed upon the government, except the last of $201 38, the petitioner claims interest on the amount found to be due.

JOHN A. ROCKWELL,
Of Counsel for Petitioner.

IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, administrator of E. TRACEY, *vs.* THE UNITED STATES.

Brief of the Deputy Solicitor.

Elisha Tracey was appointed agent for fortifications in June, 1808; an agent to perform the duties of the Quartermaster's department in January, 1809; an agent of the Ordnance department, July, 1811; and a deputy commissary of purchases, July, 1812. (Record, p. 20.)

His compensation as agent for fortifications and agent of ordnance was a commission of four per cent. on the amount of disbursements, and was paid up to the 15th of July, 1812, when he was appointed deputy commissary of purchases. (Record, p. 32.)

His compensation as agent of the Quartermaster's department was regulated in the same manner, and paid up to the same period. (Record, p. 32.

On the 15th of July, 1812, he was appointed deputy commissary of purchases. (Record, pp. 20, 30.)

The compensation attached to this office was a commission of 2½ per cent. on disbursements, provided that the amount should not exceed $2,000, (2 Stat., 607 ;) which has been paid, viz:

From July 15, 1812, to June 30, 1813, at $2,000 per annum	$1,926 23
From July 1, 1813, to June 30, 1814, at $2,000 per annum	2,000 00
From July 1, 1814, to June 30, 1815, commission of 2½ per cent	1,798 62
	5,724 85

He was also allowed by the Secretary of War the pay and emoluments of an assistant deputy quartermaster from July 1, 1812, to September 30, 1815, (Record, p. 21,) which, according to the act of March 28, 1812, sec. 2, (2 Stat., 606,) were as follows:

Pay for 27 months, at 40	$1,080 08
Forage for 27 months, at $8	216 00
Rations for 822 days, 3 per day, 2,466 rations, at 20 cts...	493 20
	1,789 20
From this allowance was deducted the sum of	151 23
As being over credited for forage, leaving the amount of allowance	1,637 97

The same rate of pay was allowed him for six months, from July 1, 1815, to December 31, 1815, $387 20. (Record, pp. 30, 31.)

The last of these allowances was made in January, 1816. (Record, p. 30.)

The claim now presented is for compensation for services and reimbursement for loss of interest, &c., during the period covered by these payments, and for some period previous, and, as stated in the petitioner's brief, as follows:

1. Compensation as quartermaster from January, 1809, to June 30, 1815, 6½ years, at $672, making $4,408, less $1,637 97 paid, leaving due $2,760 03. (Brief, p. 4.)

2. Commission on disbursements as agent of fortifications, and agent of ordnance from July, 1812, to June 30, 1815, two and a half per cent. on $78,615 14, making $3,144 20. (Brief, p. 5.)

3. Interest on draft for $20,000, protested and held unpaid for three months, $300. (Brief, p. 6.)

4. Discount at 20 per cent. on $14,500 uncurrent money received for said draft, $2,900. (Brief, p. 6,)

5. Interest on money borrowed from banks for public use, $348 25. (Brief, p. 7)

6. Interest on balances due Colonel Tracey on settlement of his quarterly accounts, $1,604 37. (Brief, p. 7.)

7. A further commission on disbursements as commissary of purchases, to make up the maximum compensation, $201 38.

In his lifetime, and after he had received the payments above stated, Colonel Tracey prosecuted sundry claims against the United States before the War and Treasury Departments and Congress. Although his petitions or statementt are not before us, we have their substance stated in various official reports, which came to his knowledge, and one of which he replied to.

The only items which he himself claimed, are as follows:

Interest on protested draft, (Record, pp. 7 and 11,).....	$300 00
Discount on depreciated paper, (Record, pp. 7 and 11,)....	3,080 00
Interest paid banks, (Record, pp. 7, 11, and 23,).....	348 25
Interest on quarterly balances, (Record, p. 7,).....	1,604 37
Additional pay as quartermaster, (Record, p. 33,).....	1,036 53
Additional for duty in ordnance, fortification, and quartermaster's departments, (Record, p. 22, 23,).....	3,997 03

Much of the evidence offered is inadmissible under the rules of this court, and, indeed, is not and cannot be made legal evidence in any sense; but I shall proceed to show that even if the unsworn certificates and *ex parte* affidavits were legal evidence, they do not sustain this claim.

1. *The first item of claim is for compensation as "acting quarter master" from January* 1809, *until June* 30, 1815.

This was not claimed by Colonel Tracey.

Colonel Tracey did not hold the office of quartermaster. "He was directed to perform the duties of the quartermaster's department." (Record, p. 20.) For the services performed under these instructions, his compensation was a commission of four per cent. on his disbursements, and he was paid up to July, 1812. (Record, pp. 32, 33.)

The reports upon Mr. Tracey's claim, which were seen and remarked upon by him in his lifetime, show no claim unpaid prior to his appointment as deputy commissary of purchases in July, 1812.

From July 1, 1812, to September 30, 1814, he has been paid the salary of assistant deputy quartermaster.

From October 1, 1814, to June 30, 1815, he has received a commission on his disbursements, (see remarks above,) or has been paid in some other way. Certainly he has no claim; for in an account which he rendered in 1828 for services in the Quartermaster's department, he charged only up to the 30th of September, 1814. In that account he stated in effect that the rate of compensation fixed by the Secretary of War was not large enough, but not that it did not cover the whole period of service.

2 *The second item of claim is for a commission of four per cent. on the amount disbursed by him for fortifications and ordnance from July* 15, 1812, *to June* 30, 1815.

Previous to the passage of the act of March 28, 1812, it was the intention of Congress that all military supplies should be purchased by an officer of the treasury, called the "purveyer of public sup-

plies," (act of February 25, 1795, chap. 27, 1 Stat. 419,) whose salary was $2,000. The War Department, however, in some cases, appointed agents to disburse its funds. This arrangement was adopted and extended by Congress in preparing for the war of 1812, and by the act of March 28, 1812, the office of purveyor was abolished, and officers of the War Department were appointed to purchase all supplies of every possible kind for that Department. These officers were quartermasters and commissaries. A regulation issued May 1, 1813, declares it to be the duty of the quartermasters to provide certain supplies, and of the commissaries to provide certain other designated articles of supplies, "and all other articles required for the public service of the army of the United States, excepting only such as are directed to be purchased by the Quartermaster general's department." Among those enumerated, are articles of ordnance and supplies required for fortifications.

If, then, the disbursements for ordnance and fortifications were for purchases for those objects, the disbursements were made by him as commissary of purchases or as quartermaster, and he has been compensated by the salary of one or the other office, having received the pay of both.

That the disbursements were for purchases is to be presumed, in the absence of proof to the contrary; but, besides this, we find in the record (p. 21) evidence that as commissasy of purchases he did purchase articles of ordnance.

Whether the purchase of materials, and employment and superintendence of persons to make up clothing and other supplies, instead of purchasing in the market, would have been an extra duty, is a question not raised by the evidence.

The third is for interest on the protested draft.

The draft was an order on the collector at New London for funds to be disbursed for public purposes. (Record, p. 11.) He did not collect the money for three months. The draft was not his property; it belonged to the United States. He held it as agent of the United States. If, instead of a treasury draft, the department had sent him a banker's draft, and interest had accrued on it, and had been collected, Col. Tracey would have carried it in his accounts to the credit of the United States.

The draft remained the property of the United States in the possession of Col. Tracey, and interest therefore could not run against the United States, or in favor of Col. Tracey.

The whole transaction gives no shadow of plausibility to this claim. Col. Tracey refused to receive treasury notes for this draft, but afterwards, as he alleges, received three-fourths of it in bank paper, 20 per cent. below par. In thus refusing treasury notes, he exercised his discretion as a public officer, certainly not the right of a creditor. This, it seems, (Record, p. 11,) he expressly at the time disclaimed.

The fourth item is for discount on depreciated bank paper received in part payment of the $20,000 *draft.*

The draft was public property, and whatever money Col. Tracey received for the draft was public money, and was the property of the United States in his hands

If he necessarily allowed a discount in using it, or paid a premium for specie, he might possibly have a claim for reimbursement upon proving such loss or payment; but no such proof is made, though he had notice to produce it in 1829. (Record, p. 13.)

The mere fact that government furnished him depreciated bank paper to be disbursed for the public service is no ground of claim. If Col. Tracey was a creditor of the United States, and received, without objection, or accepted, however reluctantly, bank paper in payment of his debt, the debt was discharged. As a public agent, receiving money to disburse, he cannot be in a better position.

It is matter of history that great part of the revenue of the United States was received and disbursed in bank paper; and every public creditor who was paid in it has as much right now to claim the difference between that and specie as this petition shows to be in Tracey.

There is no evidence that he did receive bank paper for this draft. The certificate of Gelston (Record, p. 14) only says it was paid by check on New York banks. How the New York banks paid the checks does not appear. But as Col. Tracey had refused treasury notes because they were depreciated, it is not probable that he received depreciated bank paper.

The fifth item of claim is for interest on moneys borrowed from banks.

There is no evidence to prove that he paid any interest. The certificates of Thatcher and Perkins are not evidence; nor, if they were, do they prove anything. They are opinions of persons upon facts not disclosed. He was warned of both these objections in 1830, (Record, p. 25,) and replied that he thought the certificates ought to be taken, (Record, p. 29,) but offered no further evidence on the point.

It is well known that so long as public officers were allowed to deposit money with banks their accounts were eagerly sought after, and if the bank ever kept an interest account with Col. Tracey, he must have drawn interest on balances in his favor, as well as paid interest on balances against him.

In another place, below, the petition claims interest on all balances due from the United States to Col. Tracey. That claim necessarily includes this.

The sixth item of claim is for interest on balances due Col. Tracey on the settlement of his quarterly accounts.

Col. Tracey disbursed during a period of three years, comprising 12 quarters, and must have rendered 12 quarterly accounts. On four of these accounts the balance was in his favor, viz: September 30, 1814, December 31, 1814, March 31, 1815, and June 30, 1815. On

the other eight accounts the balance must have been in favor of the United States. The petitioner charges the United States with interest on the balances in his favor.

The ruling of this court in the cases of Todd and White are conclusive against this claim; but it is, moreover, peculiarly destitute of merit.

In 1830 the Committee on Claims of the House of Representatives reported on this very item, asserted as a well known fact, and urged as an objection to the claim, that during the war "disbursing and purchasing officers frequently, when out of funds, and the exigency of the service required, or a favorable opportunity presented, made purchases, took receipts, and gave due bills, to be paid when in funds. In this way they appeared on the face of their accounts to be in advance to the United States, when, in point of fact, it was the sellers of the articles purchased that were so." (Record, p. 25.) Col. Tracey wrote two answers to this report, (Record, pp. 26, 28,) and in neither does he deny this, or say one word in support of the item. In fact he then and there abandoned it.

On the other eight accounts the United States were in advance to Col. Tracey, as he had public money in his hands. If he charges interest, he should allow interest. There is the same ground to suppose that he made interest out of funds in his hands, as there is to suppose that he paid interest on advances.

There is no evidence that these advances were necessary. If he had given due notice of the funds required they would have been remitted to him. At least it is not shown that the government ever requested him to make any advances, or ever failed speedily to comply with his requisitions for funds.

On each quarterly balance interest is charged for three months. There is no evidence that the balance remained undiminished for that length of time. On the contrary, as regards the balance due June 30, 1815, on which interest is charged to September, it appears (Record, pp. 16, 17) that warrants were ready as early as July 8 to pay it in the District of Columbia or Baltimore, but the option was allowed him to receive it in New York; when he received it does not appear.

These advances were not made at the request of the United States. Col. Tracey was an officer to make purchases and pay out money. It was no part of his duty to furnish funds. If he was authorized to make purchases beyond the amount of money advanced to him, i. e. to contract a debt, that debt would not bear interest, and Col. Tracey, by assuming and paying it, cannot be in a better condition than the original creditor.

The seventh item of claim is for balance due of compensation as deputy commissary.

This claim was not made by Col. Tracey, nor is it presented in the petition.

As stated above, the compensation of a deputy commissary was a commission of 2½ per cent. on disbursements not to exceed $2,000 per annum. The commissions allowed from July 1, 1814, to June

30, 1815, amounted to $1,798 12. The brief says that if the whole amount of disbursements be considered, the commissions would exceed $2,000. How this conclusion is arrived at does not appear. The record does not show or afford the means of computing the amount of disbursements during the period in question. What it does show, however, goes to prove that a sufficient allowance has been made. Thus the disbursements for the first half of 1815, i. e. January 1 to June 30, 1815, $4,635, $1,576, $4,372, $661, $604, $170, (Record, pp. 8, 9,) amounted to $12,000, on which the commission would be $300. Then the amount allowed for the last half of 1814 must have been ($1,798, less $300) $1,498. This shows that the accounting officers did not apply the restriction to any part of the year, and the presumption is, that if commissions for the whole year had amounted to $2,000, the whole would have been allowed.

An eighth item of claim is for pay as an issuing commissary.

This claim is mentioned in the petition, but not referred to in the brief. The length of service is not stated nor the rate of pay, nor is the evidence referred to by which the claim may be supposed to be sustained.

The office of issuing commissary referred to is probably that established by an act of March 13, 1813, sec. 9, (2 Stat., 817.) The duties are defined in the same section, and the pay is fixed by reference to sec. 2 of the act of March 28, 1812. The evidence of service is probably the certificate of W. Lee, Second Auditor, dated February 12, 1828. (Record, p. 14.)

This certificate proves nothing. If it was Col. Tracey's duty, as deputy commissary, to purchase ordnance, clothing, &c., it was his duty in the same capacity, under the 3d section of the act of March 13, 1813, to make the returns mentioned in the Auditor's certificate.

Moreover, the Secretary of War, by the act of March 13, 1813, sec. 5, was specially authorized to prescribe the duties of officers of the commissary department; and in an order, apparently of May 1, and certainly prior to July 9, 1813, is the following paragraph, (Laws and Regulations, p. 90:)

"Deputy purchasing commissaries shall not, unless specially ordered by the commissary general or by the War Department, make any issues of clothing to regiments or parts of regiments."

This is either the limitation of a duty previously existing under the act creating the office, or the imposition of a new duty under the 5th section of the act of March 3, 1813. In either case it shows it was the duty of such commissaries to make issues under proper authority.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS, MAY 30, 1859.

ELISHA TRACY'S ADMINISTRATOR *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner, in substance, states the following case in his petition:

1. Prior to the last war with Great Britain the petitioner's intestate was appointed, under the direction of the President of the United States, *an agent for fortifications.*

2. Soon afterwards the petitioner's intestate was direected to perform the duties of *the Quartermaster's department* within the district in which he resided.

3. During the whole period of the war of 1812 he was *an agent of the Ordnance department.*

4. In the year 1812, soon after the declaration of war, he was appointed *purchasing commissary.*

The petitioner avers that his intestate performed the duties of those four offices during the whole period of the war; but that, with the exception of an allowance of $1,637 97, made him by the Secretary of War, he received compensation only as purchasing commissary.

5. The petitioner's intestate also, during the same period, performed the duties of *an issuing commissary.*

6. Between the 1st of January and the 27th day of June, A. D. 1813, he advanced his own funds for the use of the United States by borrowing money from the banks at Norwich and New London, on which he paid $348 25 for interest.

7. He paid interest on a draft from the treasury for $20,000, which was protested, from September 30, to December 31, A. D. 1814, amounting to $300.

8. He paid for difference of exchange between treasury notes and other funds received from the United States and specie, the sum of $3,080.

9. At different periods, shown by his accounts, the petitioner's intestate was in advance to the government, and the interest on his advances, while they continued, amounted to the sum of $1,604 37.

1. As to the first item:

The petitioner's intestate was appointed agent for fortifications in June, A. D. 1810. (Letter of Secretary of War to chairman of Committee of Claims, dated March 23, A. D. 1830.) He held this appointment and performed its duties till the 15th day of July, A. D. 1812, when he was appointed a deputy commissary of purchases, and was allowed by the Secretary of War a commission of four per centum on the public moneys disbursed by him. (Letter of the accountant of the War Department to the Secretary of War, dated December 16, A. D. 1814.)

There is nothing due the petitioner's intestate on account of this item.

2. As to the second item:

In January, A. D. 1809, the petitioner's intestate was directed *to*

perform the duties of the Quartermaster's department. (Letter of the Secretary of War to the chairman of the Committee of Claims, dated March 23, A. D. 1830.)

By order of the Secretary of War, on the 21st day of December, A. D. 1814, he received an allowance for *extra* services performed by him in the quartermaster's department from July 1, A. D. 1812, to September 30, A. D. 1814, the pay and emoluments of an assistant deputy quartermaster general, amounting to the sum of $1,637 97. Also, by order of the Secretary of War, in January, A. D. 1816, he received a further allowance, for disbursements out of the line of his duty, the pay and emoluments of an assistant deputy quartermaster general, from July 1, to December 31, A. D. 1815, amounting to the sum of $307 20. A part of those disbursements were made prior to July, A. D. 1815, and the residue—about two-thirds thereof—thereafter.

On the eleventh of February, A. D. 1828, the petitioner's intestate presented an account, claiming additional allowances as assistant deputy quartermaster general, amounting to the sum of $1,036 53. The Third Auditor then showed him his former accounts, and explained to him the principles on which the allowances therein stated were made; and on the 12th day of February, A. D. 1828, before the Third Auditor had made his report thereon, he withdrew his account, stating that he was satisfied *that he had no claim to further allowances.*

There is no evidence on file in this case which shows that the allowances made to the petitioner's intestate for the duties performed by him in the quartermaster's department were not adequate and just.

On this item of the petitioner's claim we remark, that it was settled more than forty years ago, and that his intestate in his lifetime, after an investigation made more than thirty years ago, expressed himself satisfied with it. To justify the opening of an account so circumstanced requires evidence entirely clear and satisfactory. But if this were a recent case, there is no evidence which shows either that the decedent rendered services for which he has received no compensation, or that the compensation actually made was not all that he was reasonably entitled to. It does not appear from the evidence that there was any error in this respect.

3. As to third item:

In July, A. D. 1811, the petitioner's intestate was instructed to perform the duties of agent of the ordnance department. (Letter of the Secretary of the Treasury to the chairman of the Committee of Claims, dated March 23, A. D. 1830.) What those duties were does not distinctly appear from the evidence. The only service which it is even pretended he ever rendered in that capacity was to make disbursements on account of ordnance during the period extending from July, A. D. 1812, till June 30, A. D. 1815, to the amount of $48,258 64. The allowance already mentioned of $1,637 97 was made as compensation for the decedent's services in making disbursements on account of the Ordnance department as well as on account of fortifications, the Quartermaster's department, &c. The remarks made upon the second item of the petitioner's claim, therefore, are ap-

plicable to this item also. It does not appear from the evidence that any injustice was done to the petitioner's intestate in regard to it.

4. As to the fourth item:

Under the seventh section of the act of March 28, A, D. 1812, (2 Stat. at L., p. 697,) the petitioner's intestate, as deputy commissary of purchases, was entitled to calculate his commissions on disbursements made by him during the year commencing with the date of his appointment, and not during the calendar or fiscal year; and, if the two and one half *per centum* on the disbursements made during the portion of the year when he went out of office did not exceed two thousand dollars, he was entitled to receive the full commission, though it might have exceeded the rate of two thousand dollars a year. (United States *vs.* Dickson, 15 Peters' R., p. 141.) He was paid as follows:

From the 15th day of July, A. D. 1812, to June 30, A. D. 1813, at the rate of $2,000 *per annum*, his regular commissions during that period exceeded that rate	$1,926 23
From July 1, A. D. 1813, to June 30, A. D. 1814, at the rate of $2,000, his regular commissions exceeding that sum	2,000 00
In the third and fourth quarters of 1814, and the first and second quarters of 1815, his regular commissions amounting to the sum of	1,798 72
	5,724 95

(See statement No. 1, enclosed in the Third Auditor's report of July 15, A. D. 1858.)

He made no disbursements as deputy commissary of purchases after the 30th day of June, A. D. 1815. The papers on file do not enable us to make a calculation of the actual amount to which he was entitled, but as he received full commissions on *all* the disbursements of the fraction of the year when he went out of office, we do not perceive how it is possible that any injustice could have been done him.

The principle insisted upon by the petitioner that the whole period Mr. Tracey was deputy commissary of purchases is to be considered, and if the two and one-half *per centum* on the gross disbursements during that period exceeded the rate of $2,000 a year, then that he was entitled to be paid at that rate, is wholly untenable. Each official year constituted a period of calculation, and he was entitled to his commissions on the disbursements of that period to an amount not exceeding two thousand dollars. The settlement with him was made substantially on this principle.

There was no error in regard to the fourth item.

5. As to the fifth item:

The only evidence which seems to bear at all on this point is the certificate of the Second Auditor, dated February 12, A. D. 1828, "that Elisha Tracey, then deputy commissary, made returns to the

late office of the general of military supplies for issues of clothing ordnance supplies, &c., &c., from the 1st of April, A. D., 1813, to the 30th June, A. D. 1815." Neither the returns themselves nor copies of them are on file with the papers in this case. If they were made by Mr. Tracey, as deputy commissary of purchases, then they were probably the returns required of him in that character by the third section of the act approved March 3, A. D. 1813. (2 Stat. at L. p. 816–'17, ch. 48.) The petitioner does not make any claim under this item in his brief, and it is clear that there is no evidence on file in this case by which any such claim could be sustained.

6. The sixth item:

There is no evidence whatever on this point. The unsworn statement of Hor. Perkins and A. Thatcher are wholly inadmissable as evidence in this case. They are inadmissable not only because they are not sustained by the oaths of the persons making them, but because they do not exhibit or profess to exhibit the entire transactions of the decedent with the banks named in them. Moreover, those persons merely had *reason to believe from the nature of the checks* drawn on those banks that the money mentioned in them was expended for the use of the United States. What was the *nature* of those checks? why have they not been produced? why has not the decedent's whole account with each of the banks been offered in evidence? why was no claim for reimbursement made at the War Office?

This item is not sustained by the evidence.

7. As to the seventh item:

This item is wholly unsustained by the evidence.

8. As to the eighth item:

This item is wholly unsustained by the evidence.

9. As to the ninth claim:

If at the end of one quarter the decedent was in advance to the government for disbursements made on the day of settlement, or only a day before, and on the first day of the next quarter, or soon afterwards, he was reimbursed, there would be no just ground for claiming interest. Hence it is clear that, in order to determine the justice of this claim, it is necessary that we should have before us all the accounts of the petitioner. Without them we cannot make a proper investigation of this item. As the case now stands it is obviously unsupported by the evidence.

Our opinion, therefore, is, that the petitioner is not entitled to relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 208.

THOMAS B. KING.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

THOMAS B. KING *vs.* THE UNITED STATES.

1. The petition of claimant.
2. Original documentary evidence in the case, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this fifth day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

DISTRICT OF COLUMBIA, *Washington County, ss:*

To the honorable the Judges of the Court of Claims:

The petition of Thomas B. King, a resident citizen of Texas, respectfully showeth unto your honors: That the government of the United States is justly indebted to him in the sum of $13,464, for service and labor performed as branch pilot at the port or harbor of Brazos Santiago.

Your petitioner would represent, that he was duly appointed and commissioned branch pilot for the port of Brazos Saint Iago, to wit, on the 14th day of November, 1846, by the governor of the State of

Texas, and by virtue of an act of the legislature of the said State, approved April 17, 1846; and that he continued to hold said office up to the year 1852, having given a bond in the sum of $5,000, conditioned as the law directed. That during all the time he thus acted as branch pilot of the said port, he was always prepared and ready to pilot vessels into or out of the said harbor or port, as required by the said law of the State of Texas. That while he thus acted as aforesaid, he piloted a number of public vessels in and out of the said harbor; the pilot's fees for which, according to law, amounted to $396, (see Exhibit A, on file with the papers in the case, in the office of the Clerk of the House of Representatives,) which fees were never paid your petitioner, but payment of which was refused by Major Thomas B. Eastland, acting quartermaster at Brazos Santiago, on the grounds that the services had been rendered without a *written* order from his department.

Your petitioner would further represent, that during the years 1847 and 1848 he spoke a large number of the *public* vessels of the United States entering the port of Brazos Santiago, and offered his services as pilot, to pilot them into the said port, some of which refused his services and others accepted; but that he received no certificates for his services in these cases, the said Major Eastland refusing to permit the captains of said vessels to give him certificates of said service. (See Exhibit B, on file in the office of the Clerk of the House of Representatives.) The regular legal fees to which your petitioner was entitled for this particular class of cases, but no part of which has ever been paid him, amounted to $5,638 50; but the payment of these fees was also refused him by the said Major Eastland, in violation of law and justice.

Again, your petitioner would represent, that during the years 1847 and 1848, a large number of *private* vessels were piloted and towed in and out of the said harbor of Brazos Santiago by the United States steam tow-boats, and by order of the said Major Eastland, but without any assistance from any branch or deputy pilot, as required by law—and to the loss and injury of your petitioner, (then branch pilot of said harbor, and the only one in commission during the said years of 1847 and 1848,) of $5,415. (See Exhibit C, on file in the office af the Clerk of the House of Representatives.)

And your petitioner would represent, that neither the said sum of $5,415, nor any part thereof, has been paid him, but payment of the same was unjustly refused by the said Major Eastland, acting quartermaster at Brazos Santiago, and is still refused him by the Quartermaster's department, to the great damage of your petitioner.

And petitioner would further represent, that afterwards, to wit, from November, 1848, to September 16, 1850, he piloted various and sundry United States vessels in and out of the said harbor, your petitioner still being branch pilot, regularly appointed and commissioned for the said harbor of Brazos Santiago, and the only one appointed or acting for that harbor during that time, legal fees for which amounted to $2,014 50, according to the said statute of the State of Texas, (see Exhibit D, filed in office of the Clerk of the House of Representatives,) but which amount has been withheld from your petitioner by the gov-

ernment of the United States, to his great loss and injury, and in flagrant violation of law and justice.

Petitioner would further represents, that on the 12th day of May, 1852, his said claim was submitted to Congress, and referred to the Committee on Commerce in the House of Representatives. On the 15th day of December, 1853, a similar reference was made; and on the 20th day of December, 1853, the Committee on Commerce was discharged from further consideration of the claim, and it was referred to the Committee on Claims, but no report was ever made on it. Petitioner would also state that he is the original and solo party interested in said claim.

Petitioner therefore prays that, after due consideration, your honorable court will prepare a bill for the adoption and passage by Congress, appropriating to him the said several sums thus justly due your petitioner from the said government of the United States, and amounting in the aggregate to $13,464; and as in duty bound, your petitioner will ever pray, &c.

SNETHEN & EVANS,
Attorneys for Petitioner.

THE STATE OF TEXAS, *County of Galveston.*

Personally appeared before the undersigned authority, a justice of the peace in and for the county and State aforesaid, Thos. B. King, who, after being duly sworn, declares, that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

THOS. B. KING.

Subscribed and sworn to this 9th day of June, A. D. 1855, before me,

J. W. MOORE,
Justice of the Peace, Galveston county, Texas.

THE STATE OF TEXAS, *County of Galveston.*

I, Oscar Farish, clerk of the county court of said county, certify, that J. W. Moore, whose name is signed to the foregoing affidavit, is a justice of the peace in and for said county; that all his official acts as such are entitled to full faith and credit, and that his signature thereto is genuine.

Given under my hand and seal of said county court, this ninth day [L. S.] of June A. D. 1855.

OSCAR FARISH, *Clerk.*
By CHAS. ROSSIGNOL, *Deputy.*

Schedule of evidence for the petitioner.

THOS. B. KING *vs.* THE UNITED STATES.

Memorial to Congress, and accompanying depositions.
Deposition of J. Arnet.
Certificate of J. S. Rhea.

Certificate of J. McC. Baker.
Additional memorial to Congress.
Depositions taken before the clerk of Cameron county, Texas.
Depositions taken before the clerk of Galveston county, Texas.

P. PHILLIPS,
Solicitor for petitioner.

To the Honorable Senate and House of Representatives of the United States of America in Congress assembled:

The petition of Thomas B. King, a resident citizen of the county of Cameron, and State of Texas, respectfully represents that since the 14th day of November, A. D. 1846, up to the present time, he has been a branch pilot at the port or harbor of the Brazos Santiago, in the aforesaid county and State, (then the county of Nueces,) legally appointed and commissioned by the Governor of the State of Texas, and is now such branch pilot. Your petitioner has given the bond and security required by law, in the sum of five thousand dollars, conditioned for the faithful performance of his duties as pilot aforesaid.

Your petitioner further represents that by a heavy outlay of money he had provided pilot boats, tackle, and good and sufficient appliances of every kind, to enable him to carry on said business, and also had a deputy pilot constantly employed to assist him, as he is by law authorized to do, and is, and always has been ready and prepared to pilot any and all vessels in and out of the aforesaid harbor of Brazos Santiago.

Your petitioner further represents that he was exercising and performing his duties as branch pilot at said port or harbor of Brazos Santiago in an efficient and satisfactory manner, with ample preparations and appliances for conducting said business, and under said commission from the Governor of the State of Texas, when, on or about the first day of the month of April, A. D. 1847, Major Thomas B. Eastland entered upon the duties of quartermaster at said port of Brazos Santiago, in the service of the government of the United States of America, having the control and direction of the United States steamers and vessels then plying at said port.

Your petitioner further represents that said Major Thos. B. Eastland, quartermaster, in the most violent, illegal, and oppressive manner, proceeded to interfere with your petitioner's rights and duties as said branch pilot; that at that time, and during all the subsequent period of said Major Eastland's service as quartermaster at said port, your petitioner was the only regularly appointed and commissioned branch pilot at said port, and he and his deputies were the only persons authorized by law to pilot vessels in and out of said port.

Your petitioner further represents that very shortly after his entrance upon the duties of quartermaster at said port, the said Maj. Thos. B. Eastland came to your petitioner, and claiming and assuming to control and direct the pilotage of vessels at said port, offered your petitioner one half of the pilotage of vessels allowed by law, pro-

vided he would give and pay to said Maj. Eastland the other half. Upon your petitioner's refusing to accede to a proposition so iniquitous and unjust, and, as your petitioner had reason to believe, solely for the private emolument and advantage of said Maj. Eastland, he immediately proceeded to take into his own hands and control the pilotage of nearly every vessel arriving at or departing from said port, both public and private; by permitting and ordering the captains and masters of the government steamers, then plying at said port, to pilot and tow said vessels in and out of said port, and receiving the amount of pilotage and towage for the same, by refusing payment to your petitioner for the few government vessels piloted in or out by him, where he had the certificates of the masters and captains thereof, and finally by ordering said masters and captains not to give him said certificates, and by interfering, by force of arms, with the legally constituted civil authorities at said port when your petitioner sought redress before them.

Your petitioner further represents, that through the illegal and oppressive acts of said Major B. Eastland he was deprived of the pilotage of the greater part of the vessels, both private and those belonging to the said government during the whole period of his service as quartermaster at said port, although your petitioner was the only legally appointed pilot as aforesaid.

Petitioner represents that he and his deputies piloted a few government vessels in and out of said port during said period, and obtained the certificates of the captains and masters of the same to the services performed; but said Maj. Eastland refused to pay your petitioner for the same, under the pretence that he had not been specially employed to pilot said vessels by said Maj. Eastland. The pilotage so refused amounts to the sum of three hundred and ninety-six dollars ($396.) All of which will more fully appear by reference to the schedule marked A, and the vouchers accompanying the same, numbered from one to twenty inclusive, and also by the endorsement upon said vouchers made and signed by said Maj. Eastland, hereto annexed and made a part of this petition.

Petitioner further represents that said Major Eastland, as quartermaster, then ordered the said captains and masters of government vessels to refuse and withold the aforesaid certificates from your petitioner, even after he had performed the services; but still your petitioner was always ready with his pilot boats to pilot any and all vessels, and spoke and offered his services as pilot, outside the bar at said port, to nearly every vessel coming into said port. Many of the vessels belonging to the government of the United States were actually piloted by your petitioner, during said period, of which he has not the certificates of the masters and captains, owing to the aforesaid orders of Maj. Eastland; but the list, dates of entry, and departure and draft of water of the vessels so piloted or spoken, and service offered and refused outside the bar, is correctly set forth in schedule B, hereto annexed and made a part of this petition, the pilotage of which amounts to the sum of five thousand six hundred and thirty-eight dollars and fifty cents ($5,638 50.)

Petitioner further represents, that by the order and command of said

Major Eastland, during his service as quartermaster at said port, the captains of the government steamers plying at said port piloted and towed out and in nearly all the private vessels arriving at said port, without the assistance of any pilot at said port, although the captains of said steamers were never at any time authorized by law to pilot vessels at said port. A list of the private vessels so as aforesaid piloted and towed, together with the dates of entry and departure and draft of water, is correctly set forth in schedule C, hereto annexed and made a part of this petition, the pilotage of which amounts to the sum of five thousand four hundred and fifteen dollars, ($5,415.)

Your pettioner further represents, that finding his rights as pilot infringed and disregarded as well by said Major Eastland as by the said captains under his command and direction, he posted up in public places at said port a notice, a copy of which hereto annexed is marked E, and made a part of this petition, which the said Major Eastland tore down, as he himself informed your petitioner, at the same time directing and ordering him to post no more such notices about the premises.

The said Major Eastland then caused to be posted up a notice in a public place at said port to the effect that the government steamers plying at said port would tow in and out all vessels arriving at said port, and establishing the rate of charges for the same, which was to be paid to the said Major Eastland as quartermaster, and which he did in fact receive, both from private and public vessels indiscriminately, to the entire exclusion and great damage of your petitioner.

Your petitioner further represents that he then applied to S. E. Langdon, esq., a justice of the peace at said port, duly commissioned and qualified, and had one Benjamin T. Willse, (or Woolsey,) captain of the steamer Monmouth, (then plying at said port and owned by said U. S. government,) cited in due form of law to appear and answer a charge for damages, under the 11th section of an act of the legislature of the State of Texas, entitled, "An act for the regulation of pilots," approved April 17th, 1846, for piloting private vessels in and out of said port, in obedience to which summons said Woolsey appeared before said justice on the 18th day of June, A. D. 1847, as will more fully appear by reference to exhibit F, hereto annexed, and made a part of this petition, which is the original citation and return thereon. On which last mentioned day said Major Eastland with a party of men under his command or in his employment, entered the office of said justice while he was holding his court, and violently and forcibly interrupted the proceedings of said court, ordering the said Captain Willse immediately to leave the office and court, and doing other acts of violence and disrespect, so that said court was interrupted and broken up, as will more fully appear by reference to exhibit G, which is the original letter written by Major Eastland, dated "Brazos Santiago, June 19, 1847," hereto annexed as part of this petition.

Petitioner further represents that on the twenty-third day of July, A. D. 1847, he commenced before said justice, S. E. Langdon, esq., a proceeding against the schooner Merchant and owners, Louis A. Charteau, master, for half-pilotage, under the ninth section of the

aforesaid act, which he prosecuted legally to final judgment, as will fully appear by reference to annexed exhibit marked H, which is the original record, and is made part hereof; in which said suit, upon the eve of the departure of said vessel, a writ of attachment was issued in accordance with the provisions of the laws then and there in force, which said attachment was legally served by the sheriff of the said county, and said vessel taken into his possession and placed in charge of his legally appointed deputies and assistants, all of which will more fully appear by reference to the annexed exhibit I, which is the original attachment and return thereon.

Petitioner represents that while the said deputy, as ship-keeper, and his assistants lawfully appointed, were on board of said vessel, having the same in custody and charge by virtue of said attachment, the said Major Eastland, at the head of a party of men in his employment and under his command, armed with pistols and bowie knives, came on board said vessel, and by violence and force of arms took said vessel from the custody of said sheriff, and said Eastland in the most wanton manner beat some of them with a large iron cane, although no resistance by force was offered to his illegal proceedings; and two of said assistants were imprisoned by said Eastland for a long time. All of which will appear from the original letter of said Eastland, written and signed by himself, dated "Brazos Santiago, July 29, 1847," marked exhibit K, hereto annexed as a part hereof, in which said letter he denominates the said sheriff and his lawfully appointed assistants a *mob*.

Your petitioner further represents, that finding his recourse to the legal tribunals of his State rendered unavailing by the violence and superior force of said Major Eastland, he addressed a communication and complaint to J. Pinckney Henderson, his excellency, then governor of the State of Texas, the original reply to which, dated August 4th, 1847, together with the accompanying documents, being letters addressed to Major Eastland and the commandment at Point Isabel in said county, are hereto annexed, marked exhibit L., and made a part of this petition for reference.

Petitioner represents that notwithstanding said communication of Governor Henderson, said Major Eastland continued to pilot and tow, through the captains of the government steamers under his command, all vessels arriving at said port, both public and private, and received the pay for the same, and your petitioner was frequently prevented from piloting vessels when he had offered his services outside the bar by said captains saying to the masters of said vessels, "Don't take him; you want no pilot—we will tow and pilot you in," or to that effect.

Your petitioner charges that by the provisions of the aforesaid act of the legislature of the State of Texas he is entitled to receive for each foot of water which any vessel may draw at the time of her being piloted in or out, the sum of three dollars, and that it is an offence for any person, not a regularly appointed and commissioned pilot, to pilot vessels in said State. Petitioner further represents that he being the only pilot at said port so qualified and commissioned, would have obtained and was entitled to the pilotage of all the vessels mentioned and described in the annexed schedules marked B and C; that by the

violent, unjust, and oppressive acts and illegal orders and commands of said Thomas B. Eastland, as quartermaster aforesaid, he was deprived of the same and the great outlay and expense of money and means which he had made to carry on said business, was rendered almost an entire loss to him.

Petitioner further represents that the bar at said port is at all times dangerous and changing, the channel constantly shifting. That from this notorious fact, vessels very rarely, if ever, refuse the aid of a pilot at said port, either in or out, and that none but an experienced and skilful pilot, and one in constant practice and acquaintance with the bar, can pilot vessels there with any degree of safety.

Petitioner further states that the annexed schedules were compiled and carefully compared and corrected by him from books and memorandums kept under his direction or by him as pilot at the time, and from the log-books of said government steamers, kept at the time, and are, to the best of his belief, correct in dates, names, draft of water, amount of pilotage, and in all other respects.

For proof of the facts set forth in this petition and memorial, your petitioner refers to the annexed affidavits of James Sherwood, R. S. Lemon, S. E. Langdon, James Penn, William Brown, and other disinterested witnesses, marked exhibits M, N, O, P, Q, R, S, and T.

Petitioner further represents that on the 31st day of October, A. D. 1848, the said Thomas B. Eastland was succeeded by William W. Chapman, major and quartermaster at said port, since which period your petitioner has piloted in and out of said port many vessels belonging to the government of the United States, for which he has never received any payment or compensation, nor has any person for him, either directly or indirectly. A list of which, with the names, dates, draft of water, and amount of pilotage, together with the certificate of said Major Wm..W. Chapman is hereto annexed, marked schedule D, and is in all respects correct to the best of petitioner's knowledge and belief, and the pilotage thereon amounts to the sum of two thousand and fourteen dollars and fifty cents. ($2,014 50.)

Petitioner further represents, that previous to the arrival of said Maj. Eastland, at said port, to act as quartermaster, his pilotage of private vessels was not interfered with by the United States officers; and that he piloted in and out all government vessels, for which he was paid by Captain Hill, then acting quartermaster, as will appear from his accounts on file in the department.

Petitioner further represents, that when the captains and masters received him on board as pilot during said period, and he piloted the same in, the captains of said government steamers would refuse to tow them out, compelling them to wait until they could sail out of said port, and by other means threw every obstacle in the way of your petitioner as said branch pilot.

Petitioner further represents, that, from the nature of the case, he cannot prove the precise names of the vessels, dates of entry and departure, and exact draft of water at the time, by the oath of any person other than himself; but, as before stated, they are correctly set forth in the annexed schedules, marked as aforesaid. The premises considered, petitioner prays your honorable body for relief, and that an ap-

propriation and allowance of the sum of thirteen thousand four hundred and sixty-four dollars ($13,464) be made to him for his services rendered, and damages so as aforesaid unjustly sustained.

Petitioner further states, that he has never, either directly or indirectly, received the amount of the above claim, or any part thereof, from any source whatever, nor has any person for him; neither has he ever sold or disposed of the same in whole or in part.

THOS. B. KING.

STATE OF TEXAS, *County of Cameron, ss:*

Before me, Darius Bacon, a justice of the peace in and for said county, duly elected and qualified, and authorized by law to administer oaths, this day personally appeared Captain Thomas B. King, the acting branch pilot at the port of Brazos Santiago, in said State, to me personally well known, and who being by me duly sworn on the holy evangelists of Almighty God, declares and says, that the matters and things set forth, and contained in the foregoing petition and memorial, are correct and true to the best of his knowledge and belief.

And I, the said justice, do further certify that the statements of said King are entitled to the highest credit and confidence for his standing, and irreproachable character for integrity, honesty, and veracity.

I do further certify that I have no interest in this claim, direct or indirect, positive or contingent, nor am I the agent or attorney for any one who has; neither am I in any way related or connected with said King, but am in every respect entirely disinterested.

Witness my hand at the port of Brazos Santiago, in said county, this thirteenth day of February, A. D. one thousand eight hundred and fifty-two.

DARIUS BACON,
Justice of the Peace.

STATE OF TEXAS, *County of Cameron, ss:*

Before me, Darius Bacon, a justice of the peace in and for said county, duly elected and qualified, this day peasonally appeared Jas. Sherwood, to me well and personally known, who, being by me duly sworn, deposes and says, that during the period of Major Thomas B. Eastland's service as quartermaster at the port of Brazos Santiago, Texas, in the years 1847–'48, he was a resident of said port. That during a part of said time he was in the employment of Wm. Leetch, a deputy pilot at that port, in connexion with the pilot establishment.

Affiant knows, of his own personal knowledge, that during his period of service at said port, said Major Eastland, in the most arbitrary and violent manner, took into his own hands and control the pilotage of every vessel he could obtain, both public and private, to the exclusion of Captain Thomas B. King, the regular branch pilot of said port, and the deputy pilots. That said pilots were frequently out over the bar, in fact every day during said period when they could get there, and offered their services to all vessels arriving at said port which they could meet; which services were generally refused through

the representations and conduct of the captains of government steamers then plying at said port, under the command of said Maj. Eastland, as quartermaster.

Affiant has often heard said captains refused to tow vessels that had accepted the services of a pilot, alleging as a reason that they had taken a pilot, and now they might get out and in as they could, or to that effect.

Affiant has frequently, during said period, been out over the bar with said pilots in rough weather in the pilot boats, and has heard and known said captains to refuse to tow in the pilot boats, although their lives might be in danger from the roughness of the weather. Affiant has often heard said captains tell the masters of vessels outside the bar that they would take them in, and state the price they would charge—telling them they needed no other pilot. And affiant has good reason to believe that said Eastland received the money for piloting and towing the same.

Affiant has heard Major Eastland say (during said period) that said King should not pilot any vessel in and out of said port if he could prevent it, at the same time using violent language; and has heard B. F. Willse, then captain of the United States steamer Monmouth, now deceased, say at the same time that Captain King had no right to pilot vessels at said port; that he (Willse) was the pilot, and Major Eastland sustained him. And as Major Eastland "backed him," he would "run King off."

Affiant was on the beach at said port in the month of July A. D. 1847, and saw said Eastland at the head of a party of armed men (being two boats full) go on board the schooner "Merchant" and take violent and forcible possession of said vessel, rescuing the same from the hands and possession of James Penn, who had been placed on board said vessel as ship-keeper; at the same time said Eastland beat said Penn and one Holbein in the most cruel and barbarous manner with an iron cane which he usually carried; that said Penn did not offer any resistance to this violent proceeding by force, and said attack was entirely unprovoked.

That during the period of Major Eastland's service a great number of vessels were constantly arriving at and departing from said port. Affiant has seen from twenty to thirty towed out and in in one day; that said King rarely obtained the pilotage of vessels at said period, although he was always ready with his pilot boats, and is a very skilful pilot. Affiant has heard said Willse say when a pilot was called for by the masters of vessels, that he (Willse) was the right pilot, and no one else. Vessels rarely or never refuse a pilot at said bar, the same being at all times very dangerous. Affiant further says that he has no interest, direct or indirect, in this claim, nor is the agent or attorney for any one who has; is a resident of said county—a seaman, aged 48 years.

his
JAMES + SHERWOOD.
mark.

Sworn to and subscribed before me, this 13th February A. D. 1852; and I, said justice, certify that affiant enjoys a high character for

honesty and veracity, and he is worthy of all credit; that I signed his name by his direction, his hand being lame. I further certify as above that I have no interest, &c.

Witness my hand.

DARIUS BACON.
Justice of the Peace, County of Cameron.

STATE OF TEXAS, *County of Cameron, ss:*

Before me, E. D. Kottman, a justice of the peace in and for said county, duly elected and qualified, this day personally appeared Robert S. Leman, to me personally well known, and whose testimony I certify to be entitled to the highest credit, from his standing, character, and reputation, who, being first duly sworn by me according to law, deposes and says, that he he was present and residing at the port of Brazos Santiago, Texas, during all the time that Major Thomas B. Eastland acted there as quartermaster in the service of the United States, and for a considerable time previous thereto. Affiant was at that time and is now well acquainted with Captain Thomas B. King. That said King, during said period of Major Eastland's service, and for a long time previous thereto, acted as branch pilot at said port; and affiant is under the impression that during that period said King was the only regularly appointed and commissioned branch pilot at said port; that said King was at that time well provided with pilot boats, tackle, and every thing necessary to carry on said business, and enjoyed the reputation generally of being an able, skilful, and ready pilot; that affiant never knew that said King's business was ever in any way interfered with, until Major Thomas B. Eastland arrived at said port and took charge of the quartermaster's department there, about the first of April, A. D. 1847; but during the whole period of said Eastland's service as said quartermaster, say to about the first of November, A. D. 1848, affiant observed, and saw, that the government steamers, the Monmouth and Anson, plying at said port, under the control and direction of said Major Eastland as quartermaster, towed and piloted in and out of said port nearly every vessel that arrived, both private and those belonging to the United States government indiscriminately, and without the aid and assistance of said King as pilot. That said King always appeared to be ready with his pilot boats (and was frequently outside the bar with the same) to pilot any and all vessels, and this affiant has often seen said government steamers during said period go far out to sea to tow in vessels apparently for the purpose of preventing said King from piloting them.

Affiant further says that the bar at said port is shifting and changeable, and at all times danderous, requiring the services of a pilot skilful and well acquainted with said bar, and that it is a very rare thing for any vessel to refuse the aid of a pilot at said port either in or out.

Affiant further says that during said period of Major Eastland's service as quartermaster at said port a great number of vessels, both private and those belonging to the government of the United States,

were almost daily arriving at and departing from said port, nearly all of which were towed by the government steamers aforesaid, under the charge of said Thomas B. Eastland, quartermaster. That affiant has seen many of the receipts given by said Major Eastland and signed by him for money paid him for the pilotage and towage of said vessels by the captains and masters of the same. Affiant has seen Major Thomas B. Eastland write, and is well acquainted with his handwriting. And the letters annexed and examined by affiant, dated Brazos Santiago, June 19, 1847, and July 29, 1847, marked exhibit G and exhibit K, are in the handwriting of and signed by said Thomas B. Eastland, as also the endorsements on the vouchers attached to schedule A, by me here examined, numbered from one to ten, inclusive.

Affiant further says that he is a merchant, a native of the United States of America, aged——years, a resident of the county of Cameron, and State of Texas. That he has no interest, direct or indirect, positive or contingent, in the result of this claim upon the government of the United States. Nor is he the agent or attorney for any one who has.

R. S. LEMAN.

Sworn to and subscribed before me this 17th day of February, A D. 1852. I certify that I have no interest, direct or indirect, positive or contingent, in the result of this claim; nor am I the agent or attorney for any one who has; and that this affidavit was carefully read to deponent in my presence before signing.

Witness my hand, at Brownsville, date above written.

E. D. KOTTMAN,
Justice of the Peace, Cameron County, Texas.

STATE OF TEXAS, *County of Cameron, ss:*

Before me, Darius Bacon, a justice of the peace in and for said county and State, duly elected and qualified, this day personally appeared Sterling E. Langdon, to me personally well known, whose testimony I certify to be worthy of the highest credit from his standing and good character, and who, being by me duly sworn according to law, deposes and says: that during the period of Major Thomas B. Eastland's service as quartermaster at the port of Brazos Santiago, Texas, say from the first of April, 1847, to the first of November, A. D. 1848, he was residing at or near said port. That affiant, during most of said time, was an acting justice of the peace in the county in which said port is situated, then the county of Nueces, and now the county of Cameron, duly commissioned and qualified. That his commission here exhibited, signed by the governor of the State of Texas, under the seal of State, is dated July 12, 1847, and extends for two years, from March 1, A. D. 1847.

That during said period Thomas B. King, with whom affiant is acquainted, was the principal branch pilot at said port, regularly appointed and commissioned. Affiant says that through the orders

and official conduct of said Major Eastland the pilotage of vessels at said port was taken from said King, and that the steamers belonging to the United States government then plying at said port piloted and towed nearly every vessel arriving at said port during said period of Major Eastland's service, without the aid of said King as pilot. And affiant has reason to believe that said Major Eastland received the pilotage and towage for the same as acting quartermaster, both for vessels owned by the government of the United States and those owned by private individuals.

Affiant further says that said King, about the 9th day of June, A. D. 1847, commenced a proceeding against one Benj. F. Woolsey, then captain of the steamer Monmouth, owned by the United States government, plying at said port, for piloting vessels contrary to law, before this affiant as said justice of the peace; the original records of which suit, signed by me, are hereto annexed, marked exhibit F, which being carefully examined by me here, I identify as genuine, and also the return thereon, signed by F. Rockey, constable, who was then constable at said port, duly elected, qualified, and authorized to act as such. That during the trial of said suit said Major Eastland, using his official command and control over said Captain Woolsey as under his command as quartermaster, ordered said Woolsey to leave the court, and violently and illegally interrupted this affiant while holding his justice court, so that his action in said suit was rendered ineffective and, in fact, impossible.

Affiant further states that afterwards, on the 23d day of July, A. D. 1847, said King again commenced a proceeding before him against the owners of the schooner Merchant for half pilotage, on which an attachment was issued, and said suit was prosecuted to final judgment, and the vessel placed in custody of the sheriff of said county; the original records of which suit are hereto annexed, marked exhibit H and exhibit I, signed by me as said justice, and which being by me here carefully examined I know to be genuine, as also the returns thereon, signed by Edward A. Weyman, who was then the acting deputy sheriff of said county, duly appointed and qualified, and his act and signature are genuine.

Affiant further says that he verily believes that both of said suits, and all the proceedings therein, were just and legal; but that said judgment was never paid, owing, as affiant has reason to believe, to the violent and illegal interference of said Major Eastland, quartermaster.

Affiant further states that said King, during said period, was well provided with pilots boats and everything necessary to carry on said business; that he enjoyed the reputation of being a skilful pilot; that he was ready and often outside the bar with his pilot boat during said period, but rarely piloted vessels; that said bar is dangerous and shifting, and vessels very rarely refuse the aid of a pilot either in or out; affiant has no interest, direct or indirect, positive or contingent, in this claim, nor is he the agent or attorney for any one who has; is a resident citizen at said port of Brazos Santiago now; is twenty-nine years of age, and by profession a merchant.

S. E. LANGDON.

Sworn to and subscribed before me this 12th of February, 1852.

DARIUS BACON,
J. P. C. C., Texas.

And I, Darius Bacon, the said justice of the peace, do hereby further certify that said commission referred to in said affidavit of S. E. Langdon, esq., was exhibited to me, and is correctly set forth in said affidavit. I further certify that said affidavit was carefully read to said S. E. Langdon after having been committed to writing before me and under my direction, and was signed and sworn to before me. And I further certify that I, said justice, have no interest in said claim, direct or indirect, positive or contingent, nor am I the agent or attorney for any one who has.

Witness my hand at Brazos Santiago, in said county and State, this 12th day of February, A. D. 1852.

DARIUS BACON,
J. P. C. C., Texas.

STATE OF TEXAS, *County of Cameron:*

Before me, Darius Bacon, a justice of the peace in and for said county and State, duly elected and qualified, this day personally appeared James Penn, a credible witness, to me well and personally known, who, being by me duly sworn in due form of law, deposes and says: That during the service of Major Thomas B. Eastland as quartermaster, at the port of Brazos Santiago, Texas, he was residing at said port; that on or about the 24th day of July, A. D. 1847, he was placed in charge of the schooner Merchant, a private vessel, by Capt. Edward A. Weyman, then the deputy sheriff of the county, as his assistant and ship-keeper, by virtue of a writ of attachment issued by S. E. Langdon, esq , then acting justice of the peace at said port; that while so in charge of said vessel Major Thomas B. Eastland, then acting quartermaster at said port, came on board at the head of a party of armed men (being two boat loads) of from twenty-five to thirty in number, under the command and control of said Eastland, and took violent and forcible possession of said vessel from this affiant by force of arms; and that said Eastland, assisted and supported by said armed party, beat this affiant and others on board said vessel with an iron stick or cane in the most wanton and cruel manner, and finally proceeded to arrest him and send him to the castle of San Juan de Ulloa, at Vera Cruz, in the republic of Mexico, as a prisoner.

Affiant further states, that said Major Eastland was notified, and well knew, that your affiant was placed on board said vessel by captain E. A. Weyman, deputy sheriff of said county, as ship-keeper, by virtue of a legal process issued from a competent court. Affiant further states that no resistance, by force, was offered to the illegal seizure and rescue of said vessel, because said Eastland's party were greatly superior in numbers and all well armed. Affiant further says that he is a seaman by occupation, is aged 25 years, a resident citizen of the

county of Cameron and State of Texas, and that he has no interest, direct or indirect, positive or contingent, in the result of this claim; nor is he the agent or attorney for any one who has.

JAMES PENN,

And I, the said justice, do further certify, that the foregoing affidavit was reduced to writing in my presence and under my direction, and after being carefully read to said deponent, was sworn to and subscribed in my presence by said Penn. I further certify as above, that I have no interest, director indirect, in this claim, nor am the agent or attorney for any one who has. Witness my hand at Brazos Santiago, in said county, this twelfth day of February, eighteen hundred and fifty-two, (1852.)

DARIUS BACON, *J. P.*

STATE OF TEXAS, *County of Cameron:*

Personally appeared before me, Darius Bacon, a justice of the peace in and for said county, William Brown, to me personally well known, a witness whose testimony is entitled to great weight and credit from his character and reputation for integrity and veracity, and who, being by me duly sworn, says: that he was residing at the port of Brazos Santiago, Texas, during the period of Major Thomas B. Eastland's service there as quartermaster, in 1847, and 1848, at which period Thomas B. King was the commissioned branch pilot there. That during said period a very great number of vessels were continually arriving and departing at said port, both private and those belonging to the United States government. Affiant has seen there as many as 20 or 30 at one time during said period. Affiant further says, that nearly every vessel so arriving was piloted and towed by the steamers belonging to said government, without the aid or assistance of said King as pilot, and by command of said Major Eastland, and affiant has heard the captain's of said vessels refuse the services of said pilot when legally offered; that said King, during said period, was always ready with his pilot boats, was often outside the bar, and spoke vessels, but his services were very rarely accepted; affiant was frequently out with him over the bar in his boat; said King is a skilful pilot; said bar is dangerous and changeable, and a pilot is very rarely or never refused there; affiant has no interest, direct or indirect, in the claim, nor is the agent or attorney for any one who has; is a resident of said county, aged 29 years, and a seaman.

WILLIAM BROWN.

Sworn and subscribed to before me, after having been carefully read to affiant in my presence, this 13th February, 1852. I certify as above, that I have no interest.

DARIUS BACON, *J. P.*

STATE OF TEXAS, *County of Cameron.*

Before me Darius Bacon, a justice of the peace in and for said county, duly elected and qualified, this day personally appeared Wil-

liam Leetch, to me personally well known, a witness whose statements are entitled to all credit, and who, being by me duly sworn according to law, deposes and says: that during a portion of the period of Major Thomas B. Eastland's service as quartermaster at the port of Brazos Santiago, Texas, he was residing at said port; that during a part of said period he acted as deputy pilot at said port; that while so acting he piloted in and out of said port, among others, the vessels mentioned in the vouchers annexed to schedule A, hereto annexed and numbered from 10 to 20, inclusive; that said vouchers being here carefully examined by deponent are recognized by him; that they are the genuine certificates made and signed by those who purport to make them; that the services were actually rendered, and that said certificates are correct; are endorsed by this deponent, and all interest in them transferred to Thomas B. King. Affiant further says that during his residence at said port in said period nearly every vessel was piloted and towed by government steamers, by command of Major Eastland, and Thomas B. King, the branch pilot at said port, excluded and prevented from piloting the same; that many vessels were arriving and departing; and that the bar at said port is continually changing and very dangerous, requiring the services of a skilful pilot; and vessels at said port rarely refuse a pilot.

Said deponent is a seaman and pilot by profession, is a resident citizen of said county and State, aged 38 years. That he has no interest, direct or indirect, in this claim, nor is he the agent or attorney for any one who has.

WILLIAM LEETCH.

Sworn to and subscribed before me, the said justice, this 13th day of February, A. D. eighteen hundred and fifty-two, (1852.) I also, certify as above, that I have no interest, direct or indirect.

Witness my hand, in said port, county and State.

DARIUS BACON, *J. P.*

STATE OF TEXAS, *County of Cameron:*

Before me, E. D. Kottman, a justice of the peace in and for said county, duly elected and qualified, this day personally appeared Rice Garland, to me well known, and whom I certify to be a credible witness, who, being first duly sworn according to law, deposes and says: that during the period of Major Thomas B. Eastland's service as quartermaster at the port of Brazos Santiago, in said county and State, in the years 1847 and 1848, he was frequently at said port. That some time after said Major Eastland's arrival this affiant saw posted up a notice signed by said Eastland, in the most public place where the captains and masters of vessels usually came, to wit, on the building occupied at said port for the offices of the collector of customs, and also of the quartermaster. Affiant says that said notice was to the effect that the steamers belonging to the government of the United States of America, then plying at said port, would tow in and out of said port all vessels; and said notice established the rates of towage to be charged thereon.

Affiant is an attorney, a resident citizen of said county and State, aged ——— years.

Affiant further says that he is acquainted with the handwriting of B. F. Willse, who was at the time the captain of the United States government steamer Monmouth, plying at said port. That said Willse is now dead, and that the receipt attached to this affidavit, dated Brazos Island, April 26th, 1847, numbered 1 and 2, are written and signed by said B. F. Willse, and are genuine.

Deponent further says, that he is well and personally acquainted with said Thomas B. King, and that his character for honesty, integrity, and veracity is unexceptionable.

R. GARLAND.

Sworn to and subscribed before me, this sixteenth day of February, eighteen huhdred and fifty-two, after having been carefully read to deponent in my presence. I further certify that I have no interest, direct or indirect, positive or contingent, in the result of this claim, nor am I the agent or attorney for any one who has.

Witness my hand at the city of Brownsville in said county and State, the day above written.

E. D. KOTTMAN, *J. P. C. C., Texas.*

BRAZOS ISLAND, *April* 26, 1847.

Received of C. Lind, in pilotage over Brazos bar, schooner drawing 6½ feet, nineteen dollars.

B. F. WILLSE.

BRAZOS ISLAND, *April* 26, 1847.

Received pilotage for schooner Floridian, drawing four feet, twelve dollars.

B. F. WILLSE.

STATE OF TEXAS, *County of Cameron, ss:*

Before me, E. D. Kottman, a justice of the peace in and for said county, duly elected and qualified, this day personally appearad Russell Howard, a credible witness, who, being by me duly sworn, deposes and says that the schedules annexed to this claim, marked "A, B, and C," were compared by him, together with Thomas B. King, from books and papers purporting and appearing to be, and which he verily believes to be, the original log-books of the steamers Anson and Monmouth; and that the same are correct to the best of his knowledge and belief.

RUSSELL HOWARD.

Sworn to and subscribed before me this sixteenth day of February, A. D. eighteen hundred and fifty-two. I certify as above that I have no interest, &c.

Witness my hand at the city of Brownsville the date above written.

E. D. KOTTMAN,
Justice of the Peace.

STATE OF TEXAS, *County of Cameron, ss:*

I, Francis W. Latham, clerk of the county court in and for the county of Cameron, and State of Texas, aforesaid, do hereby certify, that Darius Bacon, esq., whose signature appears to the affidavit of James Sherwood, Sterling E. Langdon, James Penn, William Brown, and William Leetch, and also to the petition and memorial of Capt. Thomas B. King, all hereto annexed, is and was at the time of signing said affidavits and petition, an acting justice of the peace in and for the county of Comeron, and State of Texas, duly elected and qualified, as appears from the records of my office, and authorized by law to administer oaths; and that his signatures to the said petition and affidavits are genuine; and that to his acts as said justice of the peace, all faith and credit are due and owing.

I further certify that E. D. Kottman, esq., whose signature appears to the annexed affidavits of Robert S. Leman, Rice Garland, and Russell Howard, is, and was at the time of signing said affidavits, a justice of the peace in and for said county and State, duly elected and qualified, as appears from the records of my office. That to his acts as such, all faith and credit should be given; that he is legally authorized to administer oaths, and that his signatures to said affidavits are genuine.

I further certify that I am well and personally acquainted with Captain Thomas B. King, branch pilot at Brazos Santiago, in said county; that his character for honesty, integrity, and veracity, is high and fair.

Given under my hand and seal of office, at my office in the city of Brownville, on this seventeenth day of the month of February, in the year of our Lord one thousand eight hundred and fifty-two.

F. W. LATHAM,
Clerk of the County Court.
By B. H. FRY, *Deputy.*

SCHEDULE A.

A list of vessels piloted in and out of Brazos Santiago harbor, Texas, by Thomas B. King, branch pilot, and his deputy, belonging to the United States government, from June 1, 1847, to August 1, 1847, for which payment was refused by order of Major Thomas B. Eastland, acting quartermaster at said port.

Date of service.	Names and description of vessels.	In or out.	Draft of water.	Amount of pilotage.
1847.			*Feet.*	
June 13	Monterey, schooner	In	8	$24 00
	Monterey, schooner, voucher No. 1, annexed	Out	5½	16 50
29	Captain Page, schooner, voucher No. 2, annexed.	In	6½	19 50
30	Major Bache, schooner, voucher No. 3, annexed.	In & out	8	24 00
July 2	Fashion, steamer, voucher No. 4, annexed	Out	6	18 00
22	Pioneer, schooner, voucher No. 5, annexed.	In	6½	19 50
28	Telegraph, steamer, voucher No. 6, annexed	In	6	18 00
Sept. 29	Wm. Gatzmer, schooner, voucher No. 7, annexed	In	4	12 00
Oct. 12	Telegraph, steamer, voucher No. 8, annexed	In	5½	16 50
Nov. 30	Col. Yell, schooner, voucher No. 9, annexed	In	5	15 00
Dec. 5	Louisiana, schooner, voucher No. 10, annexed	In	7½	22 50
			68½	205 50
	Vessels piloted by William Leetch, deputy of Thomas B. King, branch pilot.			
June 19	Fashion, steamer, voucher No. 11, annexed	In	5½	16 50
21	Major Lear, schooner, voucher No. 12, annexed.	In	6½	19 50
22	Heroine, schooner, voucher No. 13, annexed	In	6	18 00
25	Blanche E. Sayre, schooner, voucher No. 14, annexed	In	7½	22 50
27	Maj. Barbour, schooner, voucher No. 16, annexed	In	6½	19 50
27	Secretary Marcy, propeller, voucher No. 17, annexed	In	6	18 00
30	Major Lear, schooner, voucher No. 18, annexed.	Out	5	15 00
27	General Patterson, schooner, voucher No. 15, annexed	In	7½	22 50
July 3	Blanche E Sayre, schooner, voucher No. 19, annexed	Out	5	15 00
27	Washington, propeller, voucher No. 20, annexed	In	8	24 00
			132	396 00

No. 1.

BRAZOS SANTIAGO, *June* 13, 1847.

Major. EASTLAND, Sir—

The schooner Monterey, to pilotage, Dr.

To inward pilotage, drawing eight feet, at three dollars per foot $24 00

Outward, draught five feet and a half, out..... 16 50

40 50

I certify the above bill to be correct.

L. WASHBURN.

Payment declined, for the reason that on the 4th of June, 1847,

notice was given that no pilotage would be paid for unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 2.

BRAZOS, *June* 29, 1847.

I do certify that Thomas B. King piloted the United States transport schooner, Capt. Page, into Brazos Santiago, drawing 6½ feet water, $19 50.

JAS. HORNER,
Commander.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid for unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 3.

BRAZOS SANTIAGO, *June* 30, 1847.

The United States schooner Major H. Bache Dr. to Thos. B. King for inward and outward pilotage, drawing four feet each way, at the rate of three dollars per foot, $24.

I hereby certify that the above account is correct.

WM. McDOWELL,
Commanding United States schooner H. Bache.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid for unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 4.

I hereby certify that Captain King piloted the United States schooner Fashion, out of the harbor of Brazos to sea, drawing six feet, $18.

THOS. J. ING, *Captain.*

JULY 2, 1847.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid for unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 5.

BRAZOS ISLAND, *July* 22, 1847,

United States schooner Pioneer. I certify that Thomas B. King piloted in the United States schooner Pioneer, drawing six and a half feet water, and is entitled to the pilotage as established by law, $19 50.

L. W. CURTIS,
Commander.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the undersigned, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 6.

BRAZOS SANTIAGO, *July* 28, 1847.

United States steamer Telegraph Dr. to Thos. B. King, pilot. To inward pilotage, drawing six feet, at three dollars per foot, $18.

I certify that the above account is correct, and that Thos. B. King piloted in the United States steamer Telegraph, there being no government steamers outside at the time.

P. O. WILLSON,
Commander.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 7.

BRAZOS SANTIAGO, *September* 29, 1847.

SIR: This is to certify that John R. Little piloted the United States schooner Wm. H. Gatzmer, from sea to anchorage at Brazos Santiago, drawing four feet water, $12.

HENRY WINNEMORE,
Commander.

THOS. B. EASTLAND,
Quartermaster of United States Army.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 8.

BRAZOS SANTIAGO, *October* 12, 1847.

United States steamship Telegraph, Dr. to Thos. B. King, pilot. To inward pilotage, drawing five and a half feet, at three dollars per foot, $16 50.

I certify that the above account is correct, and that Thos. B. King piloted in the United States steamship Telegraph, there being no government steamers outside at the time, and the weather unsteady and threatening a norther.

P. O. WILLSON, *Commander.*

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 9.

BRAZOS SANTIAGO, *November* 30.

This is to certify that Thomas B. King piloted the United States transport schooner Colonel Yell, from sea to anchorage in the harbor of Brazos, drawing five feet water, $15.

JAS. SHANKLIN, *Master.*

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 10.

BRAZOS SANTIAGO, *December* 5, 1847.

I certify that Thomas B. King piloted in the United States schooner Louisiana, drawing seven feet and a half water, $22 50.

JOHN E. SAVARDS,
Commanding.

Payment declined, for the reason that on the 4th day of June, 1847, notice was given that no pilotage would be paid except the service was rendered on written authority from the quartermaster, which was never given.

THOMAS B. EASTLAND,
Quartermaster.

No. 11.

JUNE 19, 1847.

I certify that the bearer (Wm. Leetch) piloted the United States schooner Fashion in over the bar to Brazos, drawing five and a half feet, $16 50.

No. 12.

BRAZOS SANTIAGO, *June* 21, 1847.

The United States Schooner Major Lear, Dr. to William Leetch for pilotage in over the bar, drawing six feet and six inches, at the rate of three dollars per foot, $19 50.

I hereby certify that the above account is corrrct.

A. L. DERICKSON, *Master.*

No. 13.

BRAZOS SANTIAGO, *June* 22, 1847.

Due to Wm. Leetch the sum of $18 for pilotage of the United States schooner Heroine over the bar, drawing six feet, at three dollars per foot, $18.

I hereby certify that the above account is correct.

ALLEN CAMPBELL, *Master.*

No. 14.

BRAZOS SANTIAGO, *June* 25, 1847.

The United States schooner Blanch C. Sayre, Dr. to Wm. Leetch for pilotage of the bar, drawing seven feet and six inches, at the rate of three dollars per foot, $22 50.

I hereby certify that the above account is correct.

D. B. JONES, *Commanding.*

No. 15.

BRAZOS SANTIAGO, *June* 27, 1847.

The United States schooner General Patterson, Dr. to Wm. Leetch for pilotage over the bar, drawing seven feet and six inches, at the rate of three dollars per foot, $22 50.

I hereby certify that the above account is correct.

C. A. JACKSON, *Master*

No. 16.

BRAZOS SANTIAGO, *June* 29, 1847.

The United States schooner Major Barbour, Dr. to William Leetch for pilotage in over the bar, drawing six feet and six inches, at the rate of three dollars per foot, $19 50.

I hereby certify that the above account is correct.

ENOCH BROOKS,
Commanding.

No. 17.

BRAZOS SANTIAGO, *June*, 27, 1847.

The United States steam propeller Secretary Marcy, Dr. to William Leetch for pilotage over the bar, drawing six feet, at the rate of three dollars per foot, $18.

I hereby certify that the above account is correct.

THOS. ROBINSON, *Master.*

No. 18.

BRAZOS SANTIAGO, *June* 3, 1841.

The United States schooner Major Lear Dr. to William Leetch for outward pilotage over the bar, drawing five feet, $15.

I hereby certify that the above account is correct.

A. L. DERICKSON, *Master.*

No. 19.

BRAZOS SANTIAGO, *July* 3, 1847.

The United States steamer Blanche C. Sayre Dr. to Wm. Leetch for pilotage out over the bar, drawing five feet, at the rate of three dollars per foot, $15.

I hereby certify that the above account is correct.

D. B. JONES, *Commanding.*

No. 20.

BRAZOS SANTIAGO, *July* 27, 1847.

The United States steam propeller Washington Dr. to William Leetch for pilotage in over the bar, drawing eight feet, at the rate of three dollars per foot, $24.

I hereby certify that the above account is correct.

JULIUS A. PRATT,
Com. United States Propeller Washington.

SCHEDULE B.

A list of vessels belonging to the United States government, spoken and pilot refused, or piloted (and certificate refused by order of Major Thomas B. Eastland, acting quartermaster) at Brazos Santiago, Texas, by Thomas B. King, branch pilot, between the first day of June, A. D. 1847, *and October* 31, *A. D.* 1848.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	Am't of pilotage.
1847.			*Feet.*	
July 9	Washington ..... propeller..	In.....	7	21 00
11	Washington..... do....	Out	7½	22 50
20	Sarah Churchman..... schooner..	In.....	7½	22 50
23	Pioneer..... do....	Out....	5	15 00
23	Sarah Churchman..... do....	Out....	5½	16 50
23	Major Bache ..... do....	In.....	6	18 00
24	Major Bache ..... do....	Out....	4	12 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	Am't of pilotage.
1858.			*Feet.*	
Aug. 1	Major Bache ---------- do	In	6	18 00
3	Major Bache ---------- do	Out	4½	13 50
10	Blanche E. Sayre ---------- do	In	6½	19 50
13	Colonel Yell ---------- do	In	6	18 00
14	Blanche E. Sayre ---------- do	Out	5	15 00
14	Ashland ---------- propeller	In	5	15 00
18	Whig ---------- schooner	Out	6	18 00
21	Colonel Yell ---------- do	Out	5	15 00
21	General Patterson ---------- do	Out	5½	16 50
22	Secretary Buchanan ---------- propeller	In	6	18 00
24	Whig ---------- schooner	In	6	18 00
28	Euphala ---------- do	In	7	21 00
30	Telegraph ---------- steamer	In	6½	19 50
30	Sarah Jane ---------- schooner	In	6	18 00
Sept. 1	Telegraph ---------- steamer	Out	5	15 00
2	Captain Morris ---------- schooner	In	6	18 00
3	Secretary Mason ---------- propeller	In	6	18 00
4	Crusoe ---------- brig	In	7	21 00
4	Euphala ---------- schooner	Out	5½	16 50
12	Secretary Walker ---------- propeller	Out	5½	16 50
24	Secretary Walker ---------- do	In	6½	19 50
24	Telegraph ---------- steamer	In	6½	19 50
24	Major Barbour ---------- schooner	In	5½	16 50
26	Major Bache ---------- do	In	5½	16 50
28	Sarah Jane ---------- do	In	6	18 00
29	Sarah Jane ---------- do	Out	6	18 00
Oct. 1	Crusoe ---------- brig	Out	6	18 00
1	Ashland ---------- propeller	Out	5	15 00
1	Major Barbour ---------- schooner	Out	4½	13 50
3	Ann Chase ---------- do	In	7	21 00
3	Major Lear ---------- do	Out	4½	13 50
4	Gatsmer ---------- do	Out	4	12 00
5	Anna Chase ---------- do	Out	6	18 00
7	Colonel Fanning ---------- do	Out	5	15 00
12	Belle ---------- do	In	5	15 00
16	Belle ---------- do	Out	4	12 00
17	Ashland ---------- propeller	Out	5	15 00
17	Whig ---------- schooner	In	6	18 00
22	Secretary Walker ---------- propeller	In	6	18 00
24	Eudora ---------- propeller	In	7	21 00
24	Major Lear ---------- do	In	6	18 00
24	Captain Page ---------- do	Out	5	15 00
28	Whig ---------- do	Out	5	15 00
30	Major Barbour ---------- do	In	6	18 00
30	Colonel Fanning ---------- do	In	6	18 00
Nov. 2	Colonel Fanning ---------- do	Out	5	15 00
2	Crusoe ---------- brig	In	7	21 00
4	Major Barbour ---------- schooner	Out	5	15 00
12	Crusoe ---------- brig	Out	6	18 00
16	Major Lear ---------- schooner	In	5½	16 50
16	Captain Page ---------- do	In	6	18 00
17	Whig ---------- do	Out	5	15 00
20	Captain Morris ---------- do	In	6	18 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	Am't of pilotage.
1847.			*Feet.*	
Nov. 21	Major Lear.....do....	Out....	6	18 00
26	Captain Page.....do....	Out....	6	18 00
Dec. 23	Telagraph .....steamer..	In.....	6	18 00
23	General Patterson .....schooner..	Out....	6	18 00
27	Captain Morris .....do....	In.....	5	15 00
29	Maria Thomas.....do....	Out....	4	12 00
29	Major Bache .....do....	In.....	5	15 00
29	Major Vinton.....do....	Out....	6½	19 50
29	Sarah Jane.....do....	In.....	5	15 00
30	Captain Morris .....do....	Out....	5	15 00
31	Colonel Fanning.....do....	Out....	5	15 00
31	General Patterson.....do....	Out....	6	18 00
1848.				
Jan. 2	Major Lear.....do....	In.....	5½	16 50
3	Pioneer.....do....	In.....	6	18 00
4	General Patterson.....do....	In.....	7½	22 50
4	Thompson ..... propeller..	Out....	6	18 00
6	Telegraph .....steamer..	Out....	6	18 00
6	Major Bache .....schooner..	Out....	4	12 00
7	Pioneer .....do....	Out....	5	15 00
7	Sarah Jane.....do....	Out....	6	18 00
7	Major Lear.....do....	In.....	5½	16 50
7	Telegraph .....steamer..	Out....	6	18 00
11	Colonel Cross .....schooner..	In.....	6	18 00
11	Maria Thomas.....do....	Out....	5	15 00
13	Louisiana.....do....	In.....	7	21 00
14	Fashion.....steamer..	Out....	5½	16 50
16	Colonel Cross.....do....	Out....	5	15 00
21	Louisiana.....do....	Out....	6	18 00
21	Captain Morris.....do....	In.....	6	18 00
21	Telagraph .....steamer..	In.....	5½	16 50
21	Major Bache .....schooner..	In.....	6	18 00
21	General Butler.....steamer..	Out....	6½	19 50
21	Telegraph.....do....	Out....	5½	16 50
24	General Butler .....do....	Out....	6	18 00
24	Maria Burt.....do....	In.....	5	15 00
25	Captain Morris .....do....	Out....	5	15 00
26	Major Lear .....schooner..	In.....	5	15 00
26	Belle.....do....	In.....	6	18 00
26	Louisiana.....do....	In.....	7	21 00
26	Sarah Jane.....do....	In.....	6	18 00
Feb. 6	Fashion .....do....	In.....	6½	19 50
7	Fashion .....do....	Out....	6	18 00
11	Euphala .....do....	In.....	7	21 00
11	Telegraph .....steamer..	In.....	6½	19 50
12	General Butler .....do....	In.....	6½	19 50
13	Blanche E. Sayre .....schooner..	In.....	7	21 00
15	Captain Williams .....do....	In.....	6	18 00
15	Maria Thomas.....do....	In.....	5	15 00
15	Major Barbour .....do....	In.....	6	18 00
15	Captain Williams .....do....	Out....	5	15 00
15	Arispe.....do....	Out....	5	15 00
17	Belle.....do....	In.....	5	15 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	A'mt of pilotage.
1848.			*Feet.*	
Feb. 20	Fashion ..... steamer..	In.....	7	21 00
21	Fashion ..... do....	Out....	5½	16 50
23	Blanche E. Sayre ..... schooner..	Out....	5½	16 50
31	Belle ..... do....	Out....	4	12 00
Mar. 7	General Butler ..... do....	In.....	7	21 00
8	Telegraph ..... do....	In.....	6	18 00
8	Arispe ..... do....	In.....	6	18 00
8	Major Lear ..... do....	Out....	5½	16 50
8	Secretary Marcy ..... do....	Out....	5½	16 50
8	Captain Lincoln ..... do....	In.....	6	18 00
8	Major Bache ..... do....	In.....	5	15 00
8	General Butler ..... do....	Out....	5	15 00
8	Fashion ..... do....	In.....	7	21 00
8	Maria Thomas ..... do....	In.....	6	18 00
10	Major Lear ..... do....	Out....	5	15 00
10	Fashion ..... do....	Out....	5	15 00
10	Telegraph ..... steamer..	Out....	5	15 00
10	Colonel Cross ..... schooner..	Out....	5	15 00
10	Louisiana ..... do....	In.....	8	24 00
11	Arispe ..... do....	Out....	5	15 00
11	Major Lear ..... do....	In.....	6	18 00
15	Louisiana ..... do....	Out....	5	15 00
15	General Patterson ..... do....	In.....	7½	22 50
16	Major Lear ..... do....	Out....	5	15 00
17	Maria Thomas ..... do....	Out....	4	12 00
18	Captain Lincoln ..... do....	Out....	5	15 00
18	General Patterson ..... do....	Out....	6	18 00
26	Fashion ..... steamer..	In.....	6½	19 50
26	Telegraph ..... do....	In.....	6½	19 50
26	Secretary Marcy ..... do....	In.....	6½	19 50
28	Fashion ..... do....	Out....	5½	16 50
29	Telegraph ..... do....	Out....	5½	16 50
29	Captain Williams ..... schooner..	In.....	5½	16 50
29	Captain Page ..... do....	In.....	6	18 00
29	Sarah Jane ..... do....	In.....	7½	22 50
29	Secretary Marcy ..... do....	Out....	6	18 00
31	Sarah Jane ..... do....	Out....	5½	16 50
April 2	Captain Page ..... do....	Out....	5	15 00
2	Captain Williams ..... do....	Out....	5	15 00
2	Major Bache ..... do....	In.....	5	15 00
12	Maria Thomas ..... do....	In.....	6½	19 50
15	Trumbull ..... steamer..	Out....	7	21 00
17	Telegraph ..... do....	In.....	6½	19 50
21	Maria Thomas ..... schooner..	Out....	5	15 00
21	Major Lear ..... do....	In.....	6	18 00
21	Telegraph ..... steamer..	Out....	5½	16 50
21	Major Bache ..... schoonor..	In.....	6	18 00
21	Blanche E. Sayre ..... do....	In.....	7	21 00
21	Maria Thomas ..... do....	In.....	6	18 00
21	Trumbull ..... steamer..	Out....	6	18 00
22	....do ..... do....	In.....	6	18 00
22	Colonel Cross ..... schooner..	In.....	7	21 00
23	Major Lear ..... do....	Out....	5	15 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessel.	In and out.	Draught of water.	Am't of pilotage.
1848.			*Fed.*	
April 23	Major Bache ..... schooner..	Out ...	5	$15 00
23	Maria Thomas ..... do....	Out ...	5	15 00
23	Colonel Cross ..... do....	Out ...	5	15 00
23	Captain Williams ..... do....	Out ...	5	15 00
23	Captain Page ..... do....	In.....	6	18 00
23	Blanche E. Sayre ..... do....	Out ...	5½	16 50
23	Major Barbour ..... do....	In.....	7½	22 50
24	....do ..... do....	Out ...	5½	16 50
24	Captain Page ..... do....	Out ...	5	15 00
27	Trumbull ..... steamer..	Out ...	6½	19 50
28	Fashion ..... do....	In.....	6½	19 50
29	....do ..... do....	Out ...	5½	16 50
May 7	Telegraph ..... do....	In.....	6	18 00
9	....do ..... do....	Out ...	5½	16 50
10	General Butler ..... do....	Out ...	6	18 00
11	Fashion ..... do....	Out ...	5½	16 50
16	Blanche E. Sayre ..... schooner..	In.....	7	21 00
16	Major Barbour ..... do....	In.....	7	21 00
16	Major Lear ..... do....	Out....	5	15 00
17	Captain Lincoln ..... do....	In.....	7	21 00
17	Maria Thomas ..... do....	In.....	6	18 00
17	Blanche E. Sayre ..... do....	Out....	5½	16 50
18	Major Barbour ..... do....	Out....	5	15 00
19	Maria Thomas ..... do....	Out....	4	12 00
20	Telegraph ..... steamer..	In.....	6½	19 50
20	Captain Lincoln ..... schooner..	Out....	5	15 00
20	Susan ..... do....	Out....	5	15 00
21	Telegraph ..... steamer..	Out....	6	18 00
21	Colonel Cross ..... schooner..	In.....	6	18 00
23	Captain Williams ..... do....	Out....	5	15 00
23	Colonel Cross ..... do....	Out....	5	15 00
24	Fashion ..... steamer..	In.....	6	18 00
25	....do ..... do....	Out....	5½	16 50
27	General Patterson ..... schooner..	In.....	7	21 00
27	Colonel Yell ..... do....	Out....	5	15 00
27	Captain Williams ..... do....	Out....	5	15 00
30	General Petterson ..... do....	Out....	6	18 00
30	Major Thompkins ..... do....	In.....	6½	19 50
June 1	....do ..... do....	Out....	5½	16 50
1	Captain Morris ..... do....	In.....	6½	19 50
2	General Butler ..... steamer..	Out....	6	18 00
2	Washington ..... do....	In.....	7½	22 50
2	Colonel Fanning ..... do....	In.....	6½	19 50
2	Captain Morris ..... schooner..	Out....	5	15 00
3	Colonel Fanning ..... steamer..	Out....	5	15 00
4	Washington ..... do....	Out....	7	21 00
5	Telegraph ..... do....	In.....	7	21 00
6	....do ..... do....	Out....	5½	16 50
6	Fashion ..... do....	In.....	7	21 00
6	Maria Thomas ..... schooner..	In.....	6	18 00
8	Fashion ..... steamer..	Out....	5½	16 50
11	Major Barbour ..... schooner..	In.....	7½	22 50
12	Major Bache ..... do....	In.....	5	15 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	Am't of pilotage.
1848.			*Feet.*	
June 12	Maria Thomas ..... schooner..	Out....	4	$12 00
15	Colonel Yell ..... do....	In.....	5	15 00
15	Colonel Cross ..... do....	In.....	6	18 00
15	Arispe ..... do....	In.....	7	21 00
15	Captain Lincoln ..... do....	In.....	7	21 00
15	General Butler ..... steamer..	In.....	7	21 00
18	Captain Page ..... schooner..	In.....	7	21 00
22	Fashion ..... steamer..	In.....	7	21 00
23	....do ..... do....	Out....	5½	16 50
24	Colonel Fanning ..... do....	Out....	5½	16 50
24	Captain Williams ..... schooner..	In.....	6	18 00
27	Captain Morris ..... do....	In.....	6½	19 50
28	Major Barbour ..... do....	Out....	5	15 00
29	Captain Page ..... do....	Out....	5	15 00
29	Telegraph ..... steamer..	In.....	6½	19 50
29	Major Vinton ..... schooner..	In.....	6½	19 50
29	Secretary Mason ..... do....	Out....	6	18 00
29	General Butler ..... do....	Out....	6	18 00
July 2	Major Barbour ..... do....	In.....	5	15 00
2	Major Vinton ..... do....	Out....	6	18 00
2	Fashion ..... steamer..	In.....	6½	19 50
2	Major Bache ..... schooner..	Out....	4	12 00
4	Maria Thomas ..... do....	In.....	6	18 00
6	Colonel Cross ..... do....	In.....	7	21 00
6	Telegraph ..... do....	Out....	5½	16 50
6	Fashion ..... steamer..	Out....	5½	16 50
8	Colonel Cross ..... schooner..	Out....	5½	16 50
8	Captain Morris ..... do...	Out....	5½	16 50
8	Captain Williams ..... do....	Out....	5½	16 50
8	Major Lear ..... do....	Out....	5½	16 50
8	Captain Lincoln ..... do....	Out....	5½	16 50
8	Colonel Yell ..... do....	Out....	5½	16 50
8	Colonel Fanning ..... do....	Out....	5½	16 50
8	Arispe ..... do....	Out....	5½	16 50
14	Maria Thomas ..... do....	In.....	5	15 00
14	Susan ..... do....	Out....	5	15 00
16	Fashion ..... steamer..	In.....	6	18 00
16	Sarah Churchman ..... schooner..	In.....	7	21 00
17	Major Bache ..... do....	In.....	5	15 00
18	Fashion ..... steamer..	Out....	5½	16 50
18	General Butler ..... do....	Out....	6	18 00
18	Major Barbour ..... schooner..	In.....	6	18 00
20	Captain Page ..... do....	Out....	5	15 00
22	Major Barbour ..... do....	Out....	5	15 00
22	Major Bache ..... do....	Out...	5	15 00
24	Major Barbour ..... do....	In.....	7	21 00
25	Sarah Churchman ..... do....	Out....	6	18 00
26	Telegraph ..... steamer..	In.....	7	21 00
	Major Thompkins ..... schooner..	Out ...	6	18 00
	Major Lear ..... do....	Out....	5	15 00
Aug. 2	Major Barbour ..... do....	Out....	5½	16 50
3	Fashion ..... steamer..	In.....	5½	16 50
4	Colonel Yell ..... schooner..	Out....	5	15 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught of water.	Am't of pilotage.
1848.			*Feet.*	
Aug. 6	Colonel Fanning ..... schooner..	Out....	5	$15 00
6	Washington ..... steamer..	In.....	7½	22 50
6	General Butler ..... do....	Out....	6	18 00
7	Washington ..... do....	Out....	7	21 00
7	Captain Lincoln ..... schooner..	In.....	6	18 00
8	Secretary Marcy ..... do....	In.....	6	18 00
8	....do..... ..... do....	Out....	6	18 00
13	Captain Lincoln ..... do....	Out....	5½	16 50
13	Telegraph ..... steamer..	Out....	5½	16 50
15	James L. Gage..... propeller..	In.....	8	24 00
16	Fashion..... ..... steamer..	In.....	7	21 00
18	....do..... ..... do....	Out....	5½	16 50
18	General Hamer..... schooner..	In.....	5	15 00
21	Captain Morris ..... do....	Out....	5	15 00
23	Susan ..... do....	Out....	6	18 00
30	Captain Williams ..... do....	In.....	5½	16 50
30	Telegraph ..... steamer..	In.....	6½	19 50
Sept. 1	Hetzel ..... do....	In.....	6½	19 50
1	Captain Page ..... schooner..	In.....	6	18 00
1	Telegraph ..... steamer..	Out....	6	18 00
2	Captain Williams ..... schooner..	Out....	5	15 00
4	Major Bache..... do....	In.....	6	18 00
5	Fashion ..... steamer..	In.....	7	21 00
6	....do..... ..... do....	Out....	5½	16 50
14	Hetzel..... do....	Out....	6	18 00
16	Maria Burt..... do....	In.....	6	18 00
15	Major Barbour ..... schooner..	Out	5	15 00
18	Major Lear..... do....	In.....	6	18 00
18	Sarah Jane..... do....	In.....	6	18 00
27	Maria Burt ..... steamer..	Out....	5	15 00
29	Major Lear ..... schooner..	Out....	5½	16 50
29	Louisiana..... ..... do....	In.....	7½	22 50
30	Secretary Mason..... propeller..	In.....	6½	19 50
Oct. 3	....do..... ..... do....	Out....	5½	16 50
6	Major Bache ..... schooner..	Out....	5	15 00
13	Major Barbour..... do....	In.....	7	21 00
13	Sarah Jane..... do....	In.....	7½	22 50
13	Major Vinton..... do....	In.....	7	21 00
14	Major Lear..... do....	In.....	6	18 00
14	Blanche E. Sayre ..... do....	In.....	7	21 00
14	Major Bache ..... do....	In.....	6	18 00
21	Major Barbour..... do....	Out	5½	16 50
22	Sarah Jane..... do....	Out....	6	18 00
23	Telegraph ..... steamer..	In.....	7	21 00
26	Blanche E. Sayre ..... schooner..	Out....	5½	16 50
26	Major Lear..... do....	Out....	5	15 00
27	Major Barbour..... do....	Out....	5½	16 50
27	Telegraph ..... steamer..	Out....	5½	16 50
29	Major Vinton ..... schooner..	Out....	6	18 00
			1,879½	5,638 50

SCHEDULE C.

A list of private vessels piloted and towed in and out of Brazos Santiago harbor, Texas, by United States steamers, between the 1st day of June, A. D. 1847, and the 31st day of October, A. D. 1848, by order of Thomas B. Eastland, acting quartermaster.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught.	Pilotage.
1847.			*Feet.*	
July 11	Delaware ..... schooner..	In....	5	$15 00
13	Exit ..... do....	In.....	6½	19 50
19	Panama ..... do....	In.....	6½	19 50
19	Equity ..... do....	Out....	4½	13 50
19	Merchant ..... do....	In.....	7½	22 50
19	William Bryan ..... do....	In.....	6	18 00
20	Paul Jones ..... do....	In.....	6½	19 50
21	North Carolina ..... do....	In.....	7	21 00
23	William Bryan ..... do....	Out....	5	15 00
23	North Carolina ..... do....	Out....	5	15 00
23	Lavinia ..... do....	In.....	7	21 00
24	Brazos ..... do....	In.....	7	21 00
24	Oreline ..... steamer..	In.....	3	9 00
24	Panama ..... schooner..	Out....	5	15 00
24	Star ..... do....	Out....	5	15 00
26	Lavinia ..... do....	Out....	5	15 00
26	Davy Jones ..... do....	In.....	3	9 00
28	Brazos ..... do....	Out....	6	18 00
28	Merchant ..... do....	Out	6	18 00
28	St. Paul ..... do....	In.....	5	15 00
Aug. 1	Florinda ..... do....	In.....	6½	19 50
3	May ..... do....	In.....	6½	19 50
3	Belle ..... do....	In.....	5	15 00
4	Macon ..... do....	In.....	7½	22 50
5	Belle ..... do....	Out....	4	12 00
5	Heroine ..... do....	In.....	6	18 00
6	....do..... do....	Out....	4½	13 50
12	Friend ..... do....	In.....	6½	19 50
13	Florinda ..... do....	Out....	5	15 00
13	J. Rowlett ..... do....	Out....	5	15 00
14	Ripple ..... do....	In.....	7	21 00
15	Panama ..... do....	In.....	6	18 00
16	Macon ..... do....	Out....	6	18 00
17	Fanny ..... steamer..	In.....	7	21 00
18	Falcon ..... schooner..	Out....	5	15 00
24	Panama ..... do....	Out....	4½	13 50
29	Howard ..... do....	Out....	6	18 00
29	Florida ..... propeller..	In.....	6½	19 50
31	....do..... do....	Out....	8	24 00
Sept. 2	William Bryan ..... schooner..	In.....	6	18 00
4	November ..... do....	In.....	7	21 00
4	A. V. Cooly ..... do....	In.....	7	21 00
23	Panama ..... do....	In.....	6	18 00
23	Heroine ..... do....	Out....	5	15 00
23	Major Eastland ..... brig...	In.....	6	18 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught.	Pilotage.
1847.			*Feet.*	
Sept. 23	William Ivy.....brig	In	7	$21 00
23	Velasco.....do	In	7	21 00
24	Sarah.....schooner	In	7	21 00
25	Fanny.....steamer	In	7	21 00
25	Sarah.....schooner	Out	5½	16 50
26	Hitchcock.....do	Out	8	24 00
28	Velasco.....brig	Out	6	18 00
29	Eleanor Stephens.....schooner	Out	6	18 00
Oct. 1	Fanny.....steamer	Out	6	18 00
2	Equity.....do	Out	5	15 00
2	James L. Day.....steamer	In	6½	19 50
2	Invincible.....schooner	In	7	21 00
2	William Ivy.....do	Out	7	21 00
3	James L. Day.....steamer	Out	6	18 00
5	John Walucought.....schooner	Out	6	18 00
5	J. W. Rolaef.....do	In	5	15 00
8	Velasco.....brig	Out	6	18 00
8	Columbia.....schooner	Out	6	18 00
9	T. B. Odele.....do	Out	5	15 00
10	Mary Rush.....brig	Out	6	18 00
10	Invincible.....schooner	Out	6	18 00
10	Elizabeth.....do	In	6½	19 50
18	....do.....do	Out	5	15 00
19	Heroine.....do	In	6	18 00
20	D. Coffin.....do	In	7	21 00
20	Major Eastland.....brig	In	7	21 00
21	Florinda.....schooner	In	6	18 00
22	James Samuel.....do	In	6	18 00
28	Whig.....do	Out	5	15 00
30	Major Eastland.....brig	Out	6	18 00
30	Howard.....schooner	Out	6	18 00
31	Fanny.....steamer	In	7	21 00
Nov. 2	James Samuel.....schooner	Out	5	15 00
2	David Coffin.....do	Out	6	18 00
2	Invincible.....do	Out	5	15 00
2	William Tell.....do	In	6	18 00
2	Sarah.....do	In	7	21 00
2	Florinda.....do	In	6	18 00
4	Hornet.....do	In	6	18 00
4	H. L. Scranton.....do	Out	5	15 00
9	Sarah.....do	Out	5	15 00
13	Aurelia.....do	Out	4	12 00
13	Invincible.....do	Out	5	15 00
13	Angler.....do	In	7	21 00
13	Charles L. Gager.....do	In	7	21 00
13	William Hazard.....do	In	7½	22 50
15	Panama.....do	Out	5	15 00
15	Madara.....do	In	6	18 00
15	Nimrod.....do	In	7½	22 50
16	Creole.....do	In	7	21 00
16	Hornet.....do	Out	4	12 00
16	Adalina.....do	Out	4	12 00
21	Creole.....do	Out	6	18 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught.	Pilotage.
1847.			*Feet.*	
Nov. 22	H. L. Scranton ..... schooner..	In.....	6½	$19 50
24	Gratitude ..... do.....	In.....	7½	22 50
24	North Carolina ..... do.....	In.....	6	18 00
Dec. 16	Jennette ..... brig...	In.....	7	21 00
22	John Randall ..... schooner..	In.....	6	18 00
22	St. Paul ..... do.....	In.....	6	18 00
23	Star ..... do.....	Out....	5	15 00
23	Gala Ferron ..... do.....	In.....	6½	19 50
26	Sylvia Wild ..... do.....	Out....	5	15 00
27	Jennette ..... brig...	Out....	5	15 00
27	Southerner ..... schooner..	Out	4½	13 50
28	Fanny ..... steamer..	In.....	6½	19 50
30	....do..... .... do.....	Out....	6	18 00
30	H. L. Scranton ..... schooner..	In.....	6½	19 50
30	Albert Rogers ..... do.....	In.....	6	18 00
1848.				
Jan. 2	Major Lear ..... do.....	In.....	5½	16 50
3	Panama ..... do.....	Out....	5	15 00
3	Helen ..... do.....	In.....	7	21 00
3	John Randall ..... do.....	In.....	6½	19 50
3	....do..... ..... do.....	Out....	4	12 00
7	Miranda ..... do.....	In.....	7½	22 50
11	St Paul ..... do.....	Out....	5½	16 50
11	H. L. Scranton ..... do.....	Out....	5	15 00
12	Floridian ..... do.....	In.....	5	15 00
14	George Lincoln ..... do.....	In.....	6	18 00
15	Heroine ..... do.....	In.....	6	18 00
15	Hornet ..... do.....	Out....	4	12 00
15	Native ..... do.....	In.....	5	15 00
16	Fanny ..... steamer..	In.....	7	21 00
16	Columbus ..... brig...	In.....	7	21 00
19	Fanny ..... steamer..	Out....	6	18 00
Oct. 20	Heroine ..... schooner..	Out....	5	15 00
20	John Roalef ..... do.....	In.....	6	18 00
21	Albert Rogers ..... do.....	Out....	5	15 00
23	Heroine ..... do.....	Out....	5	15 00
23	Ann K. Hay ..... do.....	Out....	5	15 00
23	Sea ..... do.....	In.....	7½	22 50
24	White Wing ..... do.....	In.....	6	18 00
26	Panama ..... do.....	In.....	6	18 00
26	Heroine ..... do.....	In.....	6	18 00
Feb. 6	Fanny ..... steamer..	In.....	7	21 00
7	...do .... do.....	Out....	6	18 00
12	Hamer ..... schooner..	Out....	4	12 00
12	Flor de Leon, (Spanish) ..... do.....	Out....	6	18 00
12	John Randall ..... do.....	In.....	6	18 00
15	Visitor ..... do.....	Out....	5	15 00
15	R. Mills ..... do.....	Out....	5½	16 50
15	Tasso ..... brig...	Out....	6	18 00
15	William Thompson ..... schooner..	Out....	7½	22 50
21	St. Paul ..... do.....	Out....	5	15 00
30	Nathan Bell ..... do.....	Out....	6	18 00
30	William Thompson ..... do.....	Out....	6	18 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught.	Pilotage.
1848.			*Feet.*	
Feb. 30	Othello ..... brig	In	7	21 00
31	Sarah Elizabeth ..... schooner	Out	5	15 00
31	Ohiana ..... brig	In	7	21 00
31	North Carolina ..... schooner	In	7½	22 50
Mar. 8	David Coffin ..... do	Out	5½	16 50
8	Hornet ..... do	Out	4	12 00
8	Columbian ..... do	Out	6	18 00
8	Aurelia ..... do	Out	4	12 00
9	George Lincoln ..... do	Out	5½	16 50
9	Native ..... do	In	5	15 00
15	Athos ..... do	In	8	24 00
15	North Carolina ..... do	Out	5	15 00
15	Gratitude ..... do	In	7½	22 50
15	Ashland ..... propeller	Out	5	15 00
15	Emma Norton ..... schooner	Out	5	15 00
15	John Bell ..... do	In	4½	13 50
15	Miranda ..... do	Out	5½	16 50
19	P. M. Sears ..... do	Out	5	15 00
19	Athos ..... do	Out	6	18 00
21	Othello ..... brig	Out	7	21 00
21	Robert Mills ..... schooner	In	7	21 00
21	Henry ..... brig	In	6½	19 50
29	Star ..... schooner	Out	5½	16 50
30	Henry ..... brig	Out	5½	16 50
30	Mystic ..... schooner	In	6½	19 50
31	St. Paul ..... do	In	6½	19 50
31	Howard ..... do	In	7	21 00
April 2	George Thomas ..... do	Out	6	18 00
4	Cabot ..... do	In	7	21 00
4	Hornet ..... do	In	5½	16 50
6	John Bell ..... do	Out	5½	16 50
6	St Paul ..... do	Out	5½	16 50
6	Maritiski ..... brig	Out	7½	22 50
8	Hornet ..... schooner	Out	4	12 00
8	Cabot ..... do	Out	5	15 00
8	Mary Filkins ..... do	In	7	21 00
11	H. L Scranton ..... do	Out	5	15 00
12	Florinda ..... do	In	6	18 00
13	William Thompson ..... do	Out	6	18 00
20	Star ..... do	Out	5	15 00
21	Sylvia Wild ..... do	Out	5	15 00
21	Mary Filkins ..... do	Out	5	15 00
21	A. Cadmus ..... do	In	7	21 00
22	Alvarado ..... do	Out	5½	16 50
26	David Coffin ..... do	Out	5½	16 50
27	Native ..... do	In	5	15 00
May 1	J. W. Swain ..... do	In	7½	22 50
2	J. B. Ashmead ..... do	In	6	18 00
5	J. B Ashmead ..... do	Out	7½	22 50
5	Florinda ..... do	Out	5	15 00
5	J. W. Swain ..... do	Out	6	18 00
6	Martha ..... do	Out	5½	16 50
6	Star ..... do	Out	5	15 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Names and description of vessels.	In and out.	Draught.	Pilotage.
1848.			*Feet.*	
May 11	Aurelia ..... schooner..	Out....	4½	13 50
11	Hornet ..... do....	In.....	6	18 00
11	Emma Norton..... do....	Out....	5	15 00
14	Maria ..... do....	In.....	6	18 00
15	Hornet ..... do....	Out....	4	12 00
16	Panama ..... do....	Out....	5½	16 50
17	H L. Scranton ..... do....	In.....	7	21 00
21	H. L. Scranton ..... do....	Out	6	18 00
23	Maria ..... do....	Out....	4	12 00
24	Mitis ..... do....	Out....	5½	16 50
26	Alida..... do....	In.....	5	15 00
27	Ann K. Hay..... do....	In.....	7	21 00
28	Alida..... do....	Out....	5	15 00
30	Ann K. Hay..... do....	Out....	5	15 00
June 3	Fanny ..... steamer..	In.....	8	24 00
3	Alvarado ..... schooner..	In.....	7½	22 50
4	Fanny.....	Out....	6½	19 50
4	White Wing ..... do....	Out....	5	15 00
5	Star..... do....	Out....	5½	16 50
6	Thomas ..... do....	Out....	5½	16 50
14	David Coffin..... do....	In.....	7	21 00
16	Sinderella G. Scull ..... do....	In.....	7½	22 50
16	Mary W..... do....	In.....	7½	22 50
17	General Wool ..... do....	In.....	7	21 00
19	Middlesex..... do....	Out	6	18 00
20	C. D. Leman ..... do....	Out....	4	12 00
23	Howard ..... do....	Out....	6	18 00
23	David Coffin..... do....	Out....	6	18 00
26	Heroine ..... do....	In.....	6	18 00
28	Isbon ..... do....	Out....	4	12 00
28	Florence..... do....	In.....	7	21 00
29	General Wool ..... do....	Out....	6½	19 50
29	Alvarado ..... do....	Out....	5	15 00
29	Horizontal ..... do....	Out	3	9 00
29	Heroine ..... do....	Out....	5	15 00
July 3	Heroine ..... do....	In.....	7	21 00
5	Fanny ..... steamer..	In.....	7½	22 50
5	James L. Day..... do....	Out....	6	18 00
5	Heroine ..... schooner..	Out....	5	15 00
6	Sinderella G. Scull ..... do....	Out....	6	18 00
9	Fanny.....	Out....	6	18 00
9	Mitis ..... do....	Out....	6	18 00
11	Caroline ..... do....	Out....	5	15 00
12	George Lincoln ..... do....	Out....	4	12 00
12	A. Cadmus..... do....	In.....	7	21 00
13	E. A. Ogden..... do....	In	4½	13 50
14	Panama ..... do....	In.....	6	18 00
15	H. L. Scranton ..... do....	In.....	6½	19 50
16	Sinns..... do....	In.....	6	18 00
16	Alida ..... do....	Out....	5	15 00
17	A. Cadmus..... do....	Out....	5	15 00
18	Brazos..... do....	In.....	7	21 00
24	Florence..... do....	Out....	5½	16 50
24	Samuel Rogers..... do....	In.....	7	21 00

LIST OF VESSELS—Continued.

Date of entry and exit.	Name and description of vessel.	In and out.	Draught.	Pilotage.
1848.			*Feet.*	
July 24	F. F. Hunt ..... schooner..	Out....	5	$15 00
24	David Coffin..... do....	In.....	7	21 00
25	Samuel Rogers..... do....	Out....	5½	16 50
25	Sinns..... do....	Out....	5	15 00
25	Exit ..... do....	In.....	7	21 00
28	Henry Hudson..... do....	In.....	7½	22 50
29	H. L. Scranton ..... do....	Out....	5	15 00
29	Eveline Ross ..... do....	Out....	5	15 00
Aug. 1	Brazos..... do....	Out...	6	18 00
3	Henry Hudson ..... do....	Out....	5	15 00
3	David Coffin ..... do....	Out....	5½	16 50
13	Belle del Mar..... brig...	Out....	6½	19 50
14	Banner..... schooner..	In.....	5	15 00
15	Maria ..... do....	In.....	6	18 00
20	Banner ..... do....	Out....	5	15 00
22	John Rolaef..... do....	Out....	5	15 00
25	Brave ..... do....	In.....	7	21 00
25	Mary Anne..... do....	In.....	6½	19 50
26	May ..... do....	Out....	6	18 00
26	Florinda..... do....	Out....	5	15 00
26	Adeline..... do....	Out....	4	12 00
28	Floridian ..... do....	Out....	6	18 00
28	Mitis..... do....	Out....	6	18 00
29	Maria ..... do....	Out....	5	15 00
31	Topic ..... do....	Out....	6	18 00
Sept. 2	Captain Williams ..... do....	Out....	5	15 00
4	General Taylor ..... do....	Out....	4½	13 50
14	Alvarado ..... do....	Out....	5	15 00
26	Visitor ..... do....	In.....	6	18 00
26	William and Elizabeth..... do....	In.....	6	18 00
27	Maria Burt..... do....	Out....	5½	16 50
29	Equity ..... do....	In.....	6½	19 50
Oct. 1	Ashmead ..... do....	Out....	5½	16 50
2	Alvarado ..... do....	Out....	5½	16 50
3	Southerner..... do....	Out....	5	15 00
4	Equity ..... do....	Out....	5	15 00
4	Mitis..... do....	Out....	6	18 00
4	Panama ..... do....	Out....	5	15 00
7	Belle de Mar..... brig...	In.....	8	24 00
8	Louisa ..... schooner..	Out....	4½	13 50
13	Hornet..... do....	Out....	4	12 00
14	Adela ..... do....	Out....	4	12 00
15	Southerner..... do....	Out....	5	15 00
15	Equity ..... do....	In.....	6	18 00
16	Commercial ..... do....	Out....	4	12 00
17	Native ..... do....	Out....	4	12 00
21	Emma Norton..... do....	Out....	5	15 00
21	Cornelia ..... do....	Out....	5	15 00
24	William and Elizabeth..... do....	Out....	5	15 00
24	Heroine ..... do....	In.....	7	21 00
28	Equity ..... do....	Out....	5	15 00
28	Heroine ..... do....	Out....	5	15 00
			1,805	5,415 00

SCHEDULE D.

A list of vessels belonging to the government of the United States, piloted in and out of the harbor of Brazos Santiago, Texas, by Thomas B. King, branch pilot, between November 1, A. D. 1848, and December 1, A. D. 1850.

Date of service.	Name and description of vessel.	In or out.	Draught of water.	Amount of pilotage.
1848.			*Feet.*	
Nov. 19	Telegraph ..... steamer..	In.....	7	$21 00
20	Colonel Cross ..... schooner..	In.....	7	21 00
22	Telegraph ..... steamer..	Out.....	5½	16 50
23	Major Vinton ..... schooner..	In.....	7	21 00
23	Major Bache..... do.....	In.....	6½	19 50
24	Blanche E. Sayre ..... do.....	In.....	7	21 00
28	Major Lear..... do.....	In.....	6	18 00
Dec. 9	Hetzel ..... steamer..	In.....	7½	22 50
13	Major Lear ..... schooner..	Out.....	6	18 00
14	Louisiana..... do.....	In.....	8	24 00
14	Major Vinton..... do.....	Out.....	6	18 00
15	Hetzel ..... steamer..	Out.....	6	18 00
19	Major Bache..... schooner..	In.....	6	18 00
19	Colonel Cross..... do.....	Out.....	5½	16 50
19	Arispe..... do.....	In.....	7	21 00
19	Sarah Jane..... do.....	In.....	7½	22 50
21	Telegraph ..... steamer..	In.....	7	21 00
28	Major Barbour ..... schooner..	In.....	7	21 00
29	Sarah Jane..... do.....	Out.....	6	18 00
29	Major Bache..... do.....	Out.....	4½	13 50
29	Telegraph ..... steamer..	Out.....	5½	16 50
29	Trumbull ..... do.....	Out.....	6½	19 50
30	Major Vinton ..... schooner..	In.....	7	21 00
1849.				
Jan. 2	Do..... do.....	Out.....	5½	16 50
2	Major Barbour..... do.....	Out.....	5½	16 50
5	Arispe..... do.....	Out.....	5	15 00
5	Hetzel ..... steamer..	In.....	7	21 00
11	Do..... do.....	Out.....	6½	19 50
24	Telegraph ..... do.....	In.....	6½	19 50
26	Sarah Jane ..... schooner..	In.....	7	21 00
28	Major Lear..... do.....	In.....	6	18 00
28	Telegraph ..... steamer..	Out.....	5½	16 50
Feb. 22	Ashland ..... propeller..	In.....	5	15 00
23	Do..... do.....	Out.....	5	15 00
Mar. 7	Colonel Cross ..... schooner..	In.....	6½	19 50
10	Major Barbour..... do.....	In.....	7	21 00
10	Fashion ..... do.....	In.....	6½	19 50
13	Telegraph ..... do.....	In.....	6½	19 50
13	Fashion ..... do.....	Out.....	6	18 00
16	Colonel Cross ..... schooner..	Out.....	5	15 00
16	Major Lear..... do.....	In.....	6	18 00
17	Telegraph ..... steamer..	Out.....	6	18 00
19	Major Barbour..... schooner..	Out.....	5½	16 50
28	Major Lear..... do.....	Out.....	5	15 00
April 2	Arispe..... do.....	In.....	6½	19 50
4	Fashion ..... steamer..	In.....	7	21 00
7	Do..... do.....	Out.....	6	18 00
10	Hetzel ..... do.....	In.....	7	21 00
11	Arispe ..... schooner..	Out.....	5	15 0

LIST OF VESSELS—Continued.

Date of service.	Name and description of vessel.	In or out	Draught of water.	Amount of pilotage.
1849.			*Feet.*	
April 12	Colonel Cross ..... schooner..	In.....	7	$21 00
14	Hetzel ..... steamer..	Out.....	6½	19 50
18	Colonel Cross ..... schooner..	Out.....	5	15 00
May 1	Sarah Jane ..... do.....	In.....	7	21 00
7	Telegraph ..... steamer..	In.....	7	21 00
7	Sarah Jane ..... schooner..	Out.....	5	15 00
10	Telegraph ..... steamer..	Out.....	6	18 00
June 7	Major Barbour ..... schooner..	In.....	7½	22 50
8	Colonel Cross ..... do.....	Out.....	5	15 00
9	Major Barbour ..... do.....	Out.....	5	15 00
12	Colonel Cross ..... do.....	Out.....	5	15 00
15	Sarah Jane ..... do.....	In.....	7	21 00
18	Do ..... do.....	Out.....	5	15 00
19	Arispe ..... do.....	In.....	6½	19 50
July 3	Crispe ..... do.....	Out.....	5	15 00
Aug. 6	Colonel Cross ..... do.....	In.....	7	21 00
17	Major Barbour ..... do.....	In.....	7	21 00
19	....do ..... do.....	Out...	5	15 00
Sept. 20	Crispe. ..... do.....	In.....	6	18 00
Oct. 22	....do ..... do.....	Out.....	7	21 00
30	Major Barbour ..... do...	In.....	7	21 00
Nov. 3	....do ..... do.....	Out.....	5	15 00
4	Colonel Cross ..... do.....	In.....	7	21 00
13	....do ..... do.....	Out.....	5	15 00
29	Major Barbour ..... do.....	In.....	7	21 00
Dec. 3	....do ..... do.....	Out.....	5	15 00
20	Colonel Cross ..... do.....	In.....	7	21 00
24	....do ..... do.....	Out.....	5	15 00
1850.				
Jan. 3	Major Barbour ..... do.....	In.....	7	21 00
5	....do ..... do.....	Out.....	5	15 00
25	Colonel Cross ..... do.....	In.....	7	21 00
26	....do ..... do.....	Out.....	5	15 00
Feb. 10	Major Barbour ..... do.....	In.....	7	21 00
16	....do ..... do.....	Out.....	5	15 00
Mar. 4	Colonel Cross ..... do...	In.....	8	24 00
14	....do ..... do.....	Out.....	5	15 00
April 4	....do ..... do.....	In.....	7	21 00
15	....do ..... do.....	Out.....	5	15 00
25	Major Barbour ..... do.....	In.....	8	24 00
26	....do ..... do.....	Out.....	6	18 00
May 4	....do ..... do.....	In.....	8	24 00
5	....do ..... do.....	Out.....	6	18 00
June 10	....do ..... do.....	In.....	8	24 00
11	....do ..... do.....	Out.....	6	18 00
July 17	....do ..... do.....	In.....	8	24 00
18	....do ..... do.....	Out.....	6	18 00
29	Colonel Cross ..... do.....	In.....	7½	22 50
31	....do ..... do.....	Out.....	5½	16 50
Aug. 19	Major Barbour ..... do.....	In.....	8	24 00
Sept. 1	....do ..... do.....	Out.....	6	18 00
18	Colonel Cross ..... do.....	In.....	7½	22 50
25	....do ..... do.....	Out.....	5½	16 50
26	Major Barbour ..... do.....	In.....	8	24 00
Nov. 1	....do ..... do.....	Out.....	6	18 00
5	Colonel Cross ..... do.....	In.....	7½	22 50
12	....do ..... do.....	Out.....	5½	16 50

LIST OF VESSELS—Continued.

Date of service.	Names and description of vessels.	In or out.	Draft of water.	Amount of pilotage.
1850.			*Feet.*	
Nov. 12	Major Barbour ..... schooner..	In.....	8	24 00
16	....do ..... do....	Out....	6	18 00
			671½	2,014 50

I hereby certify that Captain Thomas B. King, branch pilot at the port of Brazos Santiago, Texas, did pilot in and out the vessels mentioned in the above schedule, for which he has received no compensation.

(Signed duplicates.)

W. W. CHAPMAN,
Brevet Major and A. Q. M.

BRAZOS SANTIAGO, TEXAS, *February* 13, 1852.

EXHIBIT E.

NOTICE —This is to inform those who, from ignorance of the law, infringe on the rights of the pilots legally appointed by the State to this port, that the laws of the State governing pilots and pilotage govern this port; that the civil jurisdiction of the State extends to the centre channel of the Rio Grande; that this is no disputed territory, but Texas, and entitled to all the rights and privileges and benefits belonging to a State, and that the piloting of vessels in and out of this port without the proper authority from the State is an offence against the laws of the State, and all persons violating will be punished according to law.

THOS. B. KING,
Branch Pilot for the Port of Brazos Santiago.

MAY 31, 1848.

EXHIBIT F.

STATE OF TEXAS, *County of Nueces.*

JUSTICE'S COURT—No. 1.

THOMAS B. KING *vs.* BENJAMIN WOOLSEY.

The State of Texas to Frederick Rockey, constable of the district of Brazos Sanitago and Point Isabel in said county:

You are hereby commanded to summon Benjamin Woolsey, if he be found in your county, to be and appear before me at a court to be holden at my office at the Brazos Santiago, on the third Saturday in the month of June, A. D. 1847, to answer to the complaint of Thomas B. King in an action of damages, amounting to fifty dollars, which he claims of said defendant, giving to said defendant a copy of this citation duly certified by you.

As witness my hand and scrawl for seal, at Brazos Santiago, this

ninth day of June, A. D. one thousand eight hundred and forty-seven.

S. E. LANGDON, [L. S.]
Justice of the Peace in and for the county of Nueces, State of Texas.

[Endorsed.]

Duly served and returned according to law on the 17th June, A. D. 1847.

F. ROCKEY,
Constable Brazos Santiago.

[Endorsed.]

Deferred until the next term of the court to be held at Brazos Santiago on the third Saturday in July, it appearing to the satisfaction of the court that the plaintiff's most material witness is absent from the State.

S. E. LANGDON, *J. P.*

EXHIBIT G.

QUARTERMASTER'S OFFICE,
Brazos Santiago, June 19, 1847.

SIR: I wish you particularly to understand that in ordering Capt. Woolsey to leave your office a few minutes since, that it was not from any disrespect to you as a magistrate, or the laws which you are here to represent, but because in the suit brought against him for recovering pilotage you proposed to bring on a *pilot as a witness*. Such a proceeding would be a perversion of common justice and common sense, and I must request hereafter, when bringing suits against any of the employees of this department, that *justice* (not *malevolence*) may be the foundation of them, otherwise I cannot suffer their time to be occupied by attendance at your office.

I am, respectfully, your obedient servant,

THOS. B. EASTLAND,
Quartermaster, U. S. A.

THOS. B. KING, Esq.,
Justice of Peace for Nueces county, Texas.

EXHIBIT H.

Justice's Court, Brazos Santiago.

STATE OF TEXAS, *County of Nueces.*

THOS. B. KING *vs.* SCHOONER MERCHANT AND OWNERS—LOUIS A. CHARTEAU, MASTER.

To E. A. Weyman, Sheriff of the county of Nueces, Greeting:

You are hereby summoned to appear at my office forthwith, following the service hereof, to answer the demand made against you by Thomas B. King for half-pilotage in and out.

Witness Hon. Thos. B. King, justice of the peace for Nueces county, Texas.

S. E. LANGDON, *J. P.*

BRAZOS SANTIAGO, *July* 23, 1847.

[Endorsed.]

I hereby certify that I have executed the within in a legal manner.

EDWARD A. WEYMAN,
Sheriff County Nueces, Texas.

[Endorsed.]

Judgment rendered in favor of the plaintiff, Thos. B. King, for half-pilotage of the schooner Merchant in and out, amounting to twenty-one dollars and costs of court.

S. E. LANGDON, *J. P.*

EXHIBIT 1.

STATE OF TEXAS, *Nueces County.*

To the sheriff of said county, Greeting :

Whereas Thomas B. King has made application to the undersigned on oath in writing for an attachment against the property of the master and owners of the schooner Merchant, stating that said master and owner of said schooner are indebted to the said Thos. B. King in the sum of twenty-four dollars and fifty cents over and above all discounts, which debt arose upon a judgment, and that the said master of the schooner Merchant is about to depart from the said county as in the application, with intent to defraud the said Thos. B. King, therefore the people of the State of Texas command you to attach so much of the goods and chattels of the said master and owners of said schooner Merchant as will be sufficient to satisfy the said claim, and safely keep the same to satisfy any judgment that may be recovered on this attachment; and that you make return of your proceedings therein to the undersigned justice of the peace of said county on the *twenty-fourth* (24th) day of July in the year of our Lord eighteen hundred and forty-seven.

As witness my hand and scrawl for seal, at Brazos Santiago, this twenty third day of July, A. D. eighteen hundred and forty-seven.

S. E. LANGDON,
Justice of the Peace in and for the county of Nueces, State of Texas.

[Endorsed.]

Received July 23, 1847, at Brazos Santiago. Attached July 24, 1847, by reading the within to Captain Louis A. Charteau and placing a ship-master on board about 12 m.

EDWARD A. WEYMAN,
Deputy Sheriff County of Nueces, Texas.

EXHIBIT K.

QUARTERMASTER'S OFFICE,
Brazos Santiago, July 29, 1847.

Yesterday by *my order* the steamer "Monmouth" went along side the schooner "Merchant" for the purpose of towing her to sea. I am *credibly* informed that you placed on board the latter vessel a number of men to prevent the execution of the order—that the "Monmouth's lines were cast off, and the master of the schooner grossly abused. When I heard of this affair, I immediately proceeded on board *in hopes to find you there*, but only found three persons of the gang, who received the chastisement they deserved, and will be sent (where the whole would have been could they have been caught) to Gov. Wilson, commander of the castle of *San Juan de Ulloa*. Now, Mr. King, I give you warning for the *last time* against interfering in any way whatever with my authority as quartermaster, or the authority of any officer under my command at this depot. Don't you again *dare* raise a *mob* to prevent the execution of an order emanating from this office. If you had cause of action against the "Merchant" you should have used the *law*, (which you *pretend* to represent,) and pursued her to New Orleans, and *there* urged your claims, not have got a set of scoundrels who for a dollar would cut a man's throat to endeavor to stop the regular operations of the government for your own *private purposes*. The "Merchant" came here ladened with government property. She was chartered by the captain (as all private vessels are) with the express understanding that a tow boat should be furnished both *in* and *out* of the harbor. The captain reported his vessel ready to go to sea; you, for a pitiful claim of pilotage, with which I had nothing to do, attempted to prevent the government from fulfilling its contract—a most upright magistrate truly—endeavoring to set at defiance not only military regulations, but the very laws of the land, (which *you ought to represent*,) and for what? Why, to collect a paltry sum claimed by you for *looking on* and seeing a *government boat* bring in a vessel loaded with public property; for you well know no pilot was on board the "Merchant" when she was brought in. If you had endeavored *according to law* to collect from the captain of the "Merchant" what you claimed of him, no one could have censured your course; but to have attempted to stop a government vessel in the execution of a government contract was an outrage the governor of Texas will not excuse, and one I would advise you and your gang never again to attempt. I know how to respect the *civil* law, and always do it. You must learn the same lesson, and then may be you will know how to respect other rights.

I am, sir,

THOS. B. EASTLAND,
Major and Quartermaster, U. S. A.

MR. THOS. B. KING, *Pilot.*

EXHIBIT L.

EXECUTIVE OFFICE,
Austin, Texas, August 4, 1847.

SIR: I herewith transmit to you copies of two communications, one of which I this day addressed to Major T. B. Eastland, quartermaster, of the U. S. army, at the Brazos Santiago; the other to the commandant of the post at Point Isabel, dated 15th July, 1847, which will fully explain to you my opinions upon the subjects therein touched upon. I regret that any dispute should have arisen between yourself, acting as a magistrate in the county of Nueces, and an officer of the U. S. army. I cannot, however, say that I can see from your own and the statement of Major Eastland that you have been in fault; but as much depends upon the *manner* in which an officer asserts and exercises his authority, I again suggest to you the propriety of being very cautious in the exercise of your authority as a magistrate, especially where there any is danger of coming into collision with any of the officers of the U. S. army, and at all times to have a proper regard and respect for their rights and authority.

I have the honor to remain yours, very respectfully,
J. PINCKNEY HENDERSON.

T. B. KING,
Point Isabel, Texas.

EXECUTIVE OFFICE,
Austin, Texas, August 4, 1847.

SIR: Your communication of the 26th ultimo came to me by the last mail, enclosing a copy of a letter addressed by you to General Jesup, quartermaster general, and Colonel Whiting, assistant quartermaster general of the United States army; and also a copy of a letter by you addressed to Mr. T. B. King, a magistrate in Nueces county, Texas.

Frequent complaints having been of late made by citizens of Texas to me as the chief executive of the State, in regard to the matters treated of in your letters, as well as other matters of dispute and difficulty between the officers of the United States army and the citizens and civil officers of Nueces county, and being anxious to learn the facts fully, and so to act as to prevent, if possible, the recurrence of such difficulties and unpleasant disputes, I addressed on the 15th ultimo a communication on the subject to the commandant of the United States military post at Point Isabel, a copy of which I herewith send to you, as you may not have seen the original. That communication will explain to you my views upon the various questions therein mentioned. I presume from the tenor of your letter to General Jesup and Colonel Whiting that we do not differ in our views of the relative rights of the United States and the State of Texas upon this subject of pilots, and hope that my views, as expressed in my communication to the commandant of the post at Point Isabel on that subject, will be quite satisfactory to you.

I cannot agree with you in regard to your opinion of the rights and duty of Mr. King as a magistrate for the county of Nueces, and your authority over him, as indicated by your letter of the 19th June. He was in the exercise of a legal authority; his jurisdiction over the person and subject-matter in dispute was full and complete, and, according to your own statement, he had not erred in his judgment of the law. According to the laws of Texas, and every other State of the Union, the testimony which he was examining in the case to which you took exception, and which seems to have caused you to interfere with him, as you admit you did, was strictly legal and proper. Therefore he has a just right to complain as he has.

But let it be supposed that Mr. King *had erred* in his judgment of the law, or had been *criminally* guilty of misconduct in his official station: in the first of these supposed cases there are higher courts established by our Constitution and laws for the correction of such errors; and in the other, there are civil tribunals before which he can be arraigned to answer for any malfeasance in office; and to those tribunals alone he is to be accountable for his conduct. Therefore, any other interference with him by any other civil or military officer, is without the authority of law.

Knowing that collisions between the civil and military authorities are of frequent occurrence, especially at newly established military posts, I have been very anxious to avoid such difficulties, as far possible, within the limits of Texas; and with that view, I have been particular in all my communications to Mr. King and other State officers at Point Isabel, in advising them to be cautious in all their acts, and at all times to respect the rights and powers of the United States officers.

In order that Mr. King may know my views upon the several subjects complained of by himself and other officers and citizens of Nueces county, I shall cause to be forwarded to him a copy of this communication, together with a copy of my communication of the 15th ultimo, to the commandant of the post at Point Isabel, and shall again repeat to him my desire that he shall at all times have a proper regard and respect for the rights and authority of the United States officers.

I have the honor to be, your obedient servant,

J. PINCKNEY HENDERSON,
Governor of Texas.

Major THOMAS. B. EASTLAND,
Quartermaster U. S. Army, Brazos Santiago, Texas.

EXECUTIVE OFFICE,
Austin, Texas, July 15, 1847.

SIR: Many complaints have been laid before me, as the executive of the State of Texas, by civil officers and our citizens of Nueces county upon the subject of the extent to which officers of the United States now claim and exercise jurisdiction at Fort Polk, the Brazos island, and the mouth of the Rio Grande, within the limits of the State of Texas.

The acts of the officers of the United States army which have been most complained of are as follows: The justices of the peace complain that they are, at some of those places, interrupted in the discharge of their duties, both in civil and criminal cases, and their jurisdiction as civil officers of the State of Texas denied. The pilots appointed for the ports at Brazos Santiago and the mouth of the Rio Grande, under the laws of Texas, complain that their exclusive right to pilot all vessels not belonging to the United States is denied and infringed upon by pilots appointed by officers of the United States army. The citizens complain that they are denied the privilege of carrying on their business as traders at the places above mentioned without special permission from the United States officer in command of the particular post where they wish to trade, and that those who are permitted to carry on their business or trade refuse to pay the taxes imposed by our State laws upon persons carrying on the like business in other parts of the State.

Knowing how very difficult it is properly to understand the position of things under such circumstances, (having heard but one side of the case,) and being anxious to see that the laws of the State are properly executed, and the rights of her citizens secured, at the same time wishing to see no obstacle thrown in the way of the prosperity and good government of the army of the United States, I write this to give you the views which I entertain on the various points above stated, and shall insist upon being observed; and, also, to ask you to do me the favor to inform me, at as early a day as you can, how far the complaints named are well founded, &c.

I have instructed the pilots appointed for the ports above named, that they have the *exclusive right* to pilot *all* vesssels, not belonging to the government of the United States, into and out of said port, and to demand and receive pilotage according to the laws of the State of Texas. I have directed the comptroller of the State to instruct the assessor and collector of taxes for Nueces county to assess the property of all persons trading or carrying on any business, or having property subject by the laws of Texas to be taxed, at or within any military post within the limits of said county; and that the Rio Grande is the rightful boundary of said county, from its mouth to the town of Laredo, including said town.

To the citizens who complain that they are prevented from trading at the said posts, I say that the officers of those posts have the right to prevent the sale of ardent spirits and intoxicating drinks; and I have directed the comptroller to instruct the assessor and collector not to grant a license to *any* person to sell spirits, &c., at those places without the consent of the commanding officer. I say, also, that the citizens of the State, and all who wish to establish themselves in any business authorized by the laws of the State, at those places, are at liberty and have the *right* to do so, by complying with the laws of the State; but that the United States officer commmanding the post has the right to exclude them from any fort or enclosure, or other grounds actually occupied by any portion of the army, where the citizen or trader had not, previous to such occupation, been engaged in business at such place, or within such limits.

In regard to the jurisdiction of Texas over the points named, there can be no doubt that it is *exclusive*, and exclusive for *all* purposes, (should she deem it proper or expedient to assert it,) in civil and criminal cases, and over persons as well as property; and in this view of the case, the civil officers of the State in Nueces county, who have complained as before stated, will be instructed to claim and exercise authority at the places named (under the restrictions above mentioned) in the same manner and to the same extent to which they are authorized by law to act in any other portion of said county. This exclusive jurisdiction of each State of the Union over the territory within its limits can only be changed or abridged in the manner pointed out in the 17th article of the 8th section of the Constitution of the United States. The consent of the State, required by that article of the Constitution, in this case has not been given, &c.

I have charged Samuel Mussina, esq., the bearer of this communication, with the duty of explaining to you more minutely my views on the points referred to, and *particularly* to assure the commanders of said posts of my great disposition to avoid throwing any obstacle in the way of the prosperity of the American army.

I will be obliged if you will, at as early a day as possible, give me, as far as you can, your statement in regard to the complaints already named. Mr. Mussina will receive and forward your reply. Inasmuch as I am not informed whether or not you have the command of the other points above named, I will be obliged if you will show this to any other officer who may be interested, should there be any such.

I have the honor to be, your obedient servant,

J. PINCKNEY HENDERSON,
Governor of Texas.

The COMMANDANT OF THE POST,
Point Isabel, Texas.

We the undersigned John S. Thompson, commanding steamship yacht, and Frederick Arnet, commanding schoooner Major Barbour, latter formerly in the quartesmaster's service, do certify, that we have known Thos. B. King, as branch pilot for port of Brazos, Santiago, since 1846, and that during the time said Thos. B. King commanded the tow-boats Monmouth and Anson we never understood that it interfered with, or that he, said Thos. B. King, relinquished any of his rights and privileges as a commissioned pilot for the bar, as he always performed the service of pilot, whether the vessel was towed by the Anson or not. The steamship yacht has frequently towed government vessels to sea during the time Thos. B. King commanded the tow-boat, on account of the boat's undergoing repairs, and Thos. B. King always acted in the capacity of pilot on those occasions.

JOHN S. THOMPSON.
FREDERICK ARNET.

And furthermore, Frederick Arnet, does certify that his orders were from the quartermasters at New Orleans and at Brazos Santiago, also, whilst he commanded the Major Barbour for government, never

to cross the bar without a pilot, and to take said Thos. B. King in preference to any other person, as he was the full branch pilot at that time.

FREDERICK ARNET,
Formerly commanding U. S. schooner Major Barbour.

STATE OF TEXAS, *County of Cameron, Port of Point Isabel.*

Be it known that before me, John Lafaye, a public notary in and for the county and State aforesaid, duly commissioned and sworn, this day personally appeared John S. Thompson and Frederick Arnet, both to me well known, who executed the within and foregoing certificate in my presence, and acknowledged the same to be their free act and deed.

In testimony whereof, I have herunto set my hand and affixed my [L. S.] seal of office, this twenty-eighth day of May, A. D. 1852.

J. LAFAYE,
Notary Public, Cameron County.

CUSTOM-HOUSE, POINT ISABEL,
Collector's Office, May 28, 1852.

I hereby certify that at the date of the organization of this collection district, in May, 1849, Capt. Thos. B. King, branch pilot at this port, was in command of the United States steamer Anson, and that he continued in command of the said vessel until November, 1850, and likewise continued to act as branch pilot during said period, which office he still holds.

JOHN S. RHEA, *Collector.*

I certify that during the time I commanded the United States steamer Monmouth, and was engaged in lightering and towing in and out of the harbor of Brazos Santiago, that in all cases the pilots for the port were employed, and that no vessel to my knowledge ever enters without a pilot, as the bar is a very dangerous one, and constantly changing. I commanded the United States steamer in 1846.

JAS. McC. BAKER.
Master United States Fashion.

Witnesses—
CHAS. E. CASWELL.
JNO. P. BUTLER.

BRAZOS SANTIAGO, *May* 22, 1852.

STATE OF TEXAS, *County of Cameron, Port of Point Isabel.*

Be it known that before me, John Lafaye, a public notary in and for the county and State aforesaid, duly commissioned and sworn,

personally appeared Chas. E. Caswell and John P. Butler, with whom I am personally acquainted, and having been by me duly sworn, on their oath said: that they know Jas. McC. Baker, the individual who executed the above certificate; that they were present and saw the said Jas. McC. Baker sign the above certificate as and for his act and deed; and that the said Caswell and Butler thereupon became the subscribing witnesses thereto.

In testimony whereof I have hereunto set my hand and seal of office [L. S.] this twenty-second day of May, A. D. 1852.

J. LAFAYE,
Notary Public, Cameron County.

To the Honorable the Senate and House of Representatives of the Congress of the United States:

Your memorialist, attorney and counsel for Thos. B. King, the petitioner in the case already submitted to Congress for relief, respectfully shows:

That he presented the accompanying account for pilotage to the Quartermaster general's office for payment; that it is a duplicate of the one bound up among the papers already presented to Congress for allowance; that the account already presented was submitted after the accompanying account was rejected by Gen. Jesup, for the reasons stated in his letter herewith, and endorsed on the said account; that Mr. King has since the rejection transmitted additional evidence to support his claim for relief; that it is now submitted for the consideration of Congress, with this supplemental memorial made by your memorialist, in behalf of Mr. King.

That the affidavit of G. R. Gammon herewith, concerns the claim of Mr. King for pilotage, under the administration of the port of Brazos Santiago, by Major Eastland,

And your memorialist prays on behalf of his client, Thos. B. King, that Congress will grant speedy relief in the premises, &c.

W. G. SNETHEN,
Counsel for T. B. King, 5 Carroll place, Cap. Hill, Washington.
WASHINGTON, *June* 9, 1852.

The United States of America, by the quartermaster at Brazos Santiago, Texas, to Thomas B. King, branch pilot at said port, Dr., to piloting in and out of said port, between November 1, 1848, *and December* 1, 1850, *the following vessels:*

Date of entry and departure.	Name and description of vessels.	In or out.	Draught of water.	Am't of pilotage.
1848.			*Feet.*	
Nov. 19	Telegraph ..... steamer..	In.....	7	$21 00
20	Colonel Cross ..... schooner..	In.....	7	21 00
22	Telegraph ..... steamer..	Out.....	5½	16 50
23	Major Vinton ..... schooner..	In.....	7	21 00
23	Major Bache ..... do.....	In.....	6½	19 50
24	Blanche E. Sayre ..... do.....	In.....	7	21 00
28	Major Lear ..... do.....	In.....	6	18 00
Dec. 9	Hetzel ..... steamer..	In.....	7½	22 50
13	Major Lear ..... schooner..	Out.....	6	18 00
14	Louisiana ..... do.....	In.....	8	24 00
14	Major Vinton ..... do.....	Out.....	6	18 00
15	Hetzel ..... steamer..	Out.....	6	18 00
19	Major Bache ..... do.....	In.....	6	18 00
19	Colonel Cross ..... do.....	Out.....	5½	16 50
19	Arispe ..... do.....	In.....	7	21 00
19	Sarah Jane ..... do.....	In.....	7½	22 50
21	Telegraph ..... steamer..	In.....	7	21 00
28	Major Barbour ..... schooner..	In.....	7	21 00
29	Sarah Jane ..... do.....	Out.....	6	18 00
29	Major Bache ..... do.....	Out.....	4½	13 50
29	Telegraph ..... steamer..	Out.....	5½	16 50
29	Trumbull ..... do.....	Out.....	6½	19 50
30	Major Vinton ..... schooner..	In.....	7	21 00
1849.				
Jan. 2	....do ..... do.....	Out.....	5½	16 50
2	Major Barbour ..... do.....	Out.....	5½	16 50
5	Arispe ..... do.....	Out.....	5	15 00
5	Hetzel ..... steamer..	In.....	7	21 00
11	....do ..... do.....	Out.....	6½	19 50
24	Telegraph ..... do.....	In.....	6½	19 50
26	Sarah Jane ..... do.....	In.....	7	21 00
28	Major Lear ..... schooner..	In.....	6	18 00
28	Telegraph ..... steamer..	Out.....	5½	16 50
Feb. 22	Ashland ..... propeller..	In.....	5	15 00
23	....do ..... do.....	Out.....	5	15 00
Mar. 7	Colonel Cross ..... schooner..	In.....	6½	19 50
10	Major Barbour ..... do.....	In.....	7	21 00
10	Fashion ..... steamer..	In.....	6½	19 50
13	Telegraph ..... do.....	In.....	6½	19 50
13	Fashion ..... do.....	Out.....	6	18 00
16	Colonel Cross ..... schooner..	Out.....	5	15 00
16	Major Lear ..... do.....	In.....	6	18 00
17	Telegraph ..... steamer..	Out.....	6	18 00
19	Major Barbour ..... schooner..	Out.....	5½	16 50
28	Major Lear ..... do.....	Out.....	5	15 00
April 2	Arispe ..... do.....	In.....	6½	19 50
4	Fashion ..... steamer..	In.....	7	21 00
7	....do ..... do.....	Out.....	6	18 00

LIST OF VESSELS—Continued.

Date of entry and departure.	Name and description of vessels.	In or out.	Draught of water.	Am't of pilotage.
1849.			Feet.	
April 10	Hetzel.....steamer..	In.....	7	$21 00
11	Arispe.....schooner..	Out.....	5	15 00
12	Colonel Cross.....do.....	In.....	7	21 00
14	Hetzel.....steamer..	Out.....	6½	19 50
18	Colonel Cross.....schooner..	Out.....	5	15 00
May 1	Sarah Jane.....do.....	In.....	7	21 00
7	Telegraph.....steamer..	In.....	7	21 00
7	Sarah Jane.....schooner..	Out.....	5	15 00
10	Telegraph.....steamer..	Out.....	6	18 00
June 7	Major Barbour.....schooner..	In.....	7½	22 50
8	Colonel Cross.....do.....	Out.....	5	15 00
9	Major Barbour.....do.....	Out.....	5	15 00
12	Colonel Cross.....do.....	Out.....	5	15 00
15	Sarah Jane.....do.....	In.....	7	21 00
18	....do.....do.....	Out.....	5	15 00
19	Arispe.....do.....	In.....	6½	19 50
July 3	....do.....do.....	Out.....	5	15 00
Aug. 6	Colonel Cross.....do.....	In.....	7	21 00
17	Major Barbour.....do...	In.....	7	21 00
19	....do.....do.....	Out.....	5	15 00
Sept. 20	Arispe.....do.....	In.....	6	18 00
Oct. 22	....do.....do.....	Out ...	7	21 00
30	Major Barbour.....do.....	In.....	7	21 00
Nov. 3	....do.....do.....	Out.....	5	15 00
4	Colonel Cross.....do.....	In.....	7	21 00
13	....do.....do.....	Out.....	5	15 00
29	Major Barbour.....do.....	In.....	7	21 00
Dec. 3	....do.....do.....	Out.....	5	15 00
20	Colonel Cross.....do.....	In.....	7	21 00
24	....do.....do.....	Out.....	5	15 00
1850.				
Jan. 3	Major Barbour.....do.....	In.....	7	21 00
5	....do.....do.....	Out.....	5	15 00
25	Colonel Cross.....do.....	In.....	7	21 00
26	....do.....do.....	Out.....	5	15 00
Feb. 10	Major Barbour.....do....	In.....	7	21 00
16	....do.....do.....	Out.....	5	15 00
Mar. 4	Colonel Cross.....do.....	In.....	8	24 00
14	....do.....do.....	Out.....	5	15 00
April 4	....do.....do.....	In.....	7	21 00
15	....do.....do.....	Out.....	5	15 00
25	Major Barbour.....do.....	In.....	8	24 00
26	....do.....do.....	Out.....	5	18 00
May 4	....do.....do.....	In.....	8	24 00
5	....do.....do.....	Out.....	6	18 00
June 10	....do.....do.....	In.....	8	24 00
11	....do.....do.....	Out.....	6	18 00
July 17	....do.....do.....	In.....	8	24 00
18	....do.....do.....	Out.....	6	18 00
29	Colonel Cross.....do.....	In.....	7½	22 50
31	....do.....do.....	Out.....	5½	16 50
Aug. 19	Major Barbour.....do.....	In.....	8	24 00
Sept. 1	....do.....do.....	Out.....	6	18 00

LIST OF VESSELS—Continued.

Date of entry and departure.	Name and description of vessels.	In or out.	Draught of water.	Am't of pilotage.
1850.			*Feet.*	
Sept. 18	Colonel Cross ..... steamer..	In.....	7½	$22 50
25	....do ..... do....	Out....	5½	16 50
26	Major Barbour..... do....	In.....	8	24 00
Nov. 1	....do ..... do....	Out....	6	18 00
5	Colonel Cross..... do....	In.....	7½	22 50
12	....do ..... do....	Out....	5½	16 50
12	Major Barbour..... do....	In.....	8	24 00
16	....do ..... do....	Out	6	18 00
			671½	2,014 50

BRAZOS SANTIAGO, *February* 13, 1852.

I certify that Captain Thomas B. King, branch pilot at the port of Brazos Santiago, Texas, did pilot in and out the vessels as mentioned in the above account, belonging to and in the service of the government of the United States, for which he has received no compensation.

W. W. CHAPMAN,
Brevet Major and Acting Quartermaster.

REMARKS.—It appears by Brevet Major W. W. Chapman's report, dated at Brazos Santiago, April 1, 1852, that Thomas B. King was, during the time these charges are made for pilotage, actually in the employ of and paid by the government as master of a public steamer, at a fixed rate of compensation, and that the vessels for which pilotage is charged were towed in and out of the harbor of Brazos Santiago by the steamers under his command Mr. King is not entitled to pay as pilot, he having been paid in full for his services in another capacity.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, April 19, 1852.

QUARTERMASTER GENERAL'S OFFICE,
Washington, April 19, 1852.

SIR: I have to inform you that I have received the report of Major W. W. Chapman, relative to the account of Thos. B. King, for pilotage of sundry vessels belonging to the United States, referred by you to this office on the 11th ult.

It appears by Major Chapman's report that Capt. King was at and during the time that he charges for pilotage, actually in the service of the Quartermaster's department as master of a public steamer, and paid at a fixed rate of monthly compensation, and that all the vessels for which pilotage is charged were towed in and out of the harbor by the public steamer under his command without any pilot being on board of them. During the time Capt. King was in the employ of the government as master of a public steamer the public was entitled to all his services, and he did no more than all masters of our public steamers have always done, in towing our own vessels in and out of the harbor of Brazos Santiago.

Major Chapman further reports that nothing was said by either Captain King or himself, or even thought of by him, about pilotage, and no mention was made of the subject until Capt. King spoke to him of his claim, two or three months since, when, doubting whether he was entitled to pilotage, he signed the certificate as it is, expecting that he would be called on for a report of the facts in the case. Maj. Chapman did wrong in signing the certificate as it is, and his conduct has received the rebuke of this department.

The account cannot be allowed, and is herewith returned.

I remain, sir, very respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

W. G. SNETHEN, *Washington, D. C.*

We, the undersigned master mariners, do hereby declare that in all orders for towage received by us (upon paying the customary charge for the same,) the clause was invariably inserted, "provided there is an authorized harbor pilot on board," said orders emanating from the Quartermaster's department at Brazos Santiago; further, that Thos. B. King was duly recognized and employed there as the branch pilot for Brazos Santiago bar, during the time that he commanded the United States steamers "Monmouth" and "Anson."

J. R. GAMMON.
JOHN ROGERS.

STATE OF TEXAS, *County of Cameron, Port of Point Isabel.*

Be it known, that before me, John Lafaye, a public notary in and for the county and State aforesaid duly commissioned and sworn, this day personally appeared G. R. Gammon and John Rogers, master mariners, and to me well known, who executed the above certificate in my presence, and acknowledged the same to be their own free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my [L. S.] seal of office, this seventeenth day of May, A. D. 1852.

J. LAFAYE,
Notary Public, Cameron County.

I, Wm. Leetch, do hereby declare, that at the time Thomas B. King was commander of the United States steamers "Monmouth," and "Anson," I was deputy pilot under him, said Thos. B. King, and that during that time I never received any compensation for pilotage of United States vessels, though I frequently performed the services of pilot, but always considered the payment for such services perfectly sure.

WM. LEETCH.

STATE OF TEXAS, *County of Cameron, Port of Point Isabel.*

Be it known, that before me, John Lafaye, a public notary in and for the aforesaid county and State, duly commissioned and sworn, this day personally appeared Wm. Leetch, to me well known, who executed the above instrument in my presence, and acknowledged the same to be his own free act and deed.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] my seal of office, this seventeenth day of May, A. D. 1852.

J. LAFAYE,
Notary Public, Cameron County.

I, the undersigned, pilot of the steamboat called the "Grampus," do hereby declare, that when said steamer Grampus towed private or public vessels in or out over the bar at Brazos Santiago, it was always considered an indispensable rule that a branch pilot, duly authorized for said bar, should be on board; and that Thomas B. King was duly recognized and employed as such, during the time that he commanded the United States steamers "Monmouth" and "Anson."

JOHN WEBB.

STATE OF TEXAS, *County of Cameron, Port of Point Isabel.*

Be it known, that before me, John Lafaye, a public notary in and for the county and State aforesaid, duly commissioned and sworn, this day personally appeared John Webb, to me well known, who executed the above certificate in my presence, and acknowledged the same to be his own free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my [L. S.] seal of office, this seventeenth day of May, A. D. 1852.

J. LAFAYE,
Notary Public, Cameron County.

AN ACT for the regulation of Pilots.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the governor be, and he is hereby, authorized and required to appoint and commission for a term of four years, at each of the ports of this State, such number of competent and reputable persons as may be needed at each, for the office of branch pilot; and he shall from time to time make new appointments as aforesaid, when vacancies or an increase of business require it; but until appointments are made pursuant to this act, the pilots of the several ports who were in office when the organization of the State government took place, shall be authorized to continue acting as such on the authority of their collectoral appointments.

SEC. 2. *Be it further enacted,* That the governor shall appoint, with the consent of the Senate, for each port of the State, whose population

and circumstances will warrant it, a board of five persons of respectable standing, under the denomination of commissioners of pilots for such port; three of whom shall be practical seamen, and the other two merchants, who shall be commissioned by the governor for the term of four years, and the governor shall, during the recess of the legislature, be authorized to suspend until the next session of the same, any of said commissioners, and to fill until the same period any vacancies in the board caused by death, resignation, or otherwise; *Provided*, however, that no member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust.

SEC. 3. *Be it further enacted*, That said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization, and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any case of alleged or supposed misconduct, or inefficiency in branch or deputy pilots, and they shall be authorized, after a due hearing of accusation testimony, and defence, to suspend such pilot, if sufficient cause appear; and during such suspension he shall not be allowed to exercise the functions of his office. The governor shall, however, have power, at his will and pleasure, to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners.

SEC. 4. *Be it further enacted*, That the board of commissioners of pilots of each port, thall require a certain term of residence in the republic or State of Texas not less than two years, to authorize any person to exercise the functions of branch pilot for their port, as also to establish a term of probation not exceeding one year, as a deputy pilot, before any person can exercise the functions of branch pilot; *Provided*, however, that the latter requirement shall not apply to those who have been branch pilots in the same port, under the laws of the republic, and are reappointed under the laws of the State of Texas.

SEC. 5. *Be it further enacted*, That each branch pilot shall give a bond, with two or more securities, made payable to the governor and his successors in office, for the sum of five thousand dollars, conditioned for the faithful performance of the duties of said pilot; which bond shall be presented to the board of commissioners for pilots, or if there be none, to the chief justice of the county in which the port is situated, and must be approved by said board or judge before said pilot can exercise the duties of his office, and the bond aforesaid shall be forwarded by said commissioners or judge, with their or his approval thereon endorsed, to the governor.

SEC. 6. *Be it further enacted*, That the board of commissioners of pilots shall have authority, within the limits provided in this act, to fix the rates of pilotage and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence, as also respecting the class, condition, number, and use of pilot boats, and such other minor regulations

compatible with the provisions of this act as may be needful for the governance of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept: *Provided*, no regulation shall be adopted repugnant to the constitution of the State.

SEC. 7. *Be it further enacted*, That the board of commissioners of pilots shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage, to award to pilots extra compensation for extra services to vessels in distress, as also compensation for injurious loss of time incurred by pilots in waiting on vessels, or by being carried off to sea on vessels by default of the master or owner, when such pilots might have been landed: *Provided, always*, That no more than three dollars for each day shall be awarded for mere loss of time; and it shall be the duty of said board to superintend and generally attend to all matters appertaining to pilots and pilotage, but from any decision of said board, an appeal may be taken to the court having cognizance of the case.

SEC. 8. *Be it further enacted*, That each branch pilot may appoint, subject to examination and approval of the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board, shall forfeit his own appointment; and the said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draft of water.

SEC. 9. *Be it further enacted*, That the rate of pilotage on any class of vessels shall not, in any port of this State, exceed three dollars for each foot of water which the vessel at the time of piloting draws, and that whenever a vessel, except of the classes below excepted, shall decline the service of a pilot offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall in so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in; but if she has come in without the aid of a pilot, or the offer of it outside, she shall in case of going out without a pilot not be liable to half pilotage; and when a pilot takes charge of a vessel twenty miles outside of the bar and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in; but if such off-shore service be declined, no portion of the said compensation for it shall be recovered; and the following classes of vessels shall be free from any charge for pilotage, unless for actual service, to wit: all vessels of twenty tons and under; all vessels of whatsoever burden, owned in the State of Texas, and registered and licensed in the district of Texas, when arriving from or departing to any port of the State of Texas; all vessels of seventy-five tons and under, owned and licensed for the coasting-trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all ves-

sels of seventy-five tons and under, owned in the State of Texas, and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States.

SEC. 10. *Be it further enacted*, That any branch or deputy pilot who shall be guilty of taking charge of a vessel in a state of inebriety, shall, upon proof of the same, for the first offence be suspended for one month, and for a second offence be dismissed. and be rendered incapable of again serving in either capacity ; and if any branch or deputy pilot shall wilfully or by neglect cause the wreck of a vessel, he shall be dismissed, and be rendered incapable of again serving in either capacity, and shall be subject to such punishment as is prescribed by law.

SEC. 11. *Be it further enacted*, That if any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port of this State, when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot, the sum of fifty dollars, to be recovered before any court having cognizance of the case.

SEC. 12. *Be it further enacted*, That the consignee of any vessel shall be held responsible for the pilotage of said vessel.

SEC. 13. *Be it further enacted*, That at any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the governor may authorize the chief justice of the county to appoint a provisional committee of from three to five persons of good character and maritime experience, who shall be authorized under this act to establish the rates of pilotage and the rules for governing pilots ; to examine the qualification of pilots and applicants for the office ; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear.

SEC. 14. *Be it further enacted*, That the act of Congress of the republic of Texas, entitled an act appointing pilots, approved May 23, 1838, and that entitled an act regulating the appointment and duties of pilots at the port of Galveston, approved February 4, 1842, be and are hereby repealed.

SEC. 15. *Be it further enacted*, That this act take effect from and after its passage.

Approved 17th April, A. D. 1846.

BRAZOS SANTIAGO, *May* 14, 1852.

Enclosed I send you a copy of the State laws of Texas, for the regulation of pilots and pilotage; by referring to which you will perceive that I, being the branch pilot for the port, was entitled to pilotage as I have claimed, during the whole of my term of appointment from June, 1846, up until this date, and that I have invariably used my best endeavor to fill the office as efficiently as I could. Major Chapman relieved Major T. B. Eastland, and shortly after his appointment to the post at Brazos placed the government boat under my charge.

The circumstances were these: Major Chapman orders the captain of the tow-boat Monmouth to tow a vessel to sea; the captain reported that the bar was too rough. Major Chapman sent for me, as the pilot for the port, and inquired if I could take the vessel to sea with the tow-boat Monmouth. I said I could. The major then said to me, "Go and do so;" and I did tow the vessel out without difficulty. On my return from outside, Major Chapman offered me the command of the tow-boat, as he was dissatisfied with the person then in charge, and intended discharging him. I am sure that it could not be but for the good of the public service that the government steamer should always have the branch pilot for the port on board. You will see by the State laws that no one could act as a pilot unless appointed either as branch or deputy, under penalty for each and every offence of fifty dollars, and by the affidavits accompanying, that in all cases I was considered as justly entitled to my fees. Vessels cannot enter this port without a pilot, as it is a dangerous shifting bar harbor, and you may be sure that I would not suffer any one to act in that capacity who did not hold a commission under the State of Texas, unless compelled to do so by force, which outrage you will see by reference to my documents I was by force compelled to submit to during the administration of Major T. B. Eastland, and I did keep up for two years the pilotage department at this port at a serious loss to myself; as Major Eastland had remarked that if he could not drive me off he would starve me off!—for what? Because I would not pilot for government at one rate and the private vessels at another. By the State laws the pilotage is regulated; and any rate above or below the legal one would be wrong. As far as regards Major Chapman, when he signed my certificate as receiving no compensation for my services as pilot, he knew when he signed that I commanded the tow-boats Monmouth and Anson during the time the said services were performed, and he considered that the said command would not in any way interfere with my duties as pilot, but on the contrary give efficiency to the pilot service, and insure prompt and reliable action on any emergency in the public service.

When I took charge of the tow-boat, it was expressly understood that it should not interfere with my rights and perquisites as pilot, either in piloting for government or private vessels. Major Chapman is absent at present, and was so when I received your last letter and the returned account. I do not know when he will return: as soon as he does I will have an understanding about what sort of a report he made. When I saw him last he told me that he had stated the facts to the Quartermaster General, and that he had made no contract with me to pilot government vessels free of pilotage; nor either could he have done so, for this reason, the pilotage had to be paid to me, let who would command the tow-boat; and, as I stated to you in my previous letter, it was a very convenient command for me to have, and in accepting it I did not neglect my duties as pilot, but on the contrary was enabled to give the most effectual assistance to any vessel at a moment's notice. During the whole time I commanded the tow-boats not a single accident or loss occurred, either public or private. For reference I refer you to Volney E. Howard, with whom I wish you to consult on this claim, also General Sam Houston. I have written to

both of the honorable gentlemen on the subject. The collector of our port, Mr. Rhea, will be in Washington. See him, and he also will help, together with the other gentlemen, to establish the righteousness of my claim.

Yours truly,

THOS. B. KING.

W. G. SNETHEN, Esq., *Washington, D. C.*

BRAZOS SANTIAGO, PRECINCT No. 2,
County of Cameron, State of Texas:

Personally appeared before me, Darius Bacon, a justice of the peace in and for precinct, county, and State aforesaid, duly commissioned and sworn, G. R. Gammon, to me personally known, at this time master of three-masted schooner Star, trading from this port to New Orleans, who, being duly sworn according to law, doth depose and say, that he commanded the schooner Florinda, of New Orleans, a part of the time that Major Thos. B. Eastland was quartermaster at Brazos Santiago, and that on one occasion when he was brought into port by a pilot, on landing he met Major T. B. Eastland, who asked Captain Gammon how he got into port. The Captain answered that he was brought in by a pilot. Major Eastland then said that if ever Captain G. R. Gammon took a pilot again, he, Major T. B. Eastland, would not allow any of the government steamboats to tow him, or rather the vessel he commanded, in or out.

Sworn and subscribed to before me, this twenty-sixth day of March, A. D. 1852, as witness my hand and scrawl for seal.

G. R. GAMMON, [L. S.]
DARIUS BACON, [L. S.]
Justice of the Peace in and for Cameron County, Texas.

Deposition of John Graham, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King *vs.* the United States. The adverse party was notified and did not attend.

John Graham sworn, says:

Question. What is your name; your age; your occupation? Where did you reside for the year past?

Answer. My name is John Graham; my age forty-nine; by occupation I am a ship carpenter, and for the past year I have resided at Point Isabel, Cameron county, Texas.

Question. Have you any interest, direct or indirect, in the subject of inquiry of the claim now pending?

Answer. I have no interest whatever in the matter.

Question. Are you in any way related to Thomas B. King, the claimant herein mentioned?

Answer. I am not.

Question. Do you or not know the account now before you to be true and correct?

Answer. I do know it to be correct.

Question. Do you know anything further in relation to this claim?

Answer. I was in the employ of the United States quartermaster as a ship carpenter, the whole time that the account before me accrued, and know that Thomas B. King was the branch pilot of the port of Brazos Santiago, and the magistrate of the precinct.

JOHN GRAHAM.

STATE OF TEXAS, *County of Cameron:*

On the 31st day of May, A. D. 1856, personally came the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by me, and then proposed by me to the witness, and the answers thereto were written down by me in the presence of the witness, who then subscribed the deposition in my presence.

Witness my hand and seal of office, at Brownsville, county of Cameron, State of Texas, this May 31, A. D. 1856.

[L. S.] W. W. NELSON, *Clerk,*
District Court, County of Cameron, Texas.

Deposition of Joel L. Filkins, taken at the request of Thomas B. King to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King, against the United States.

The adverse party being notified did not appear, and did not object.

Question. What is your name, your age, your occupation; where did you reside for the past year?

Answer. My name is Joel L. Filkins; I am 24 years of age; I am a cooper, and have resided for the last year at Point Isabel, Cameron county.

Question. Have you any interest, direct or indirect, in the claim which is the subject of inquiry.

Answer. I have no interest whatever.

Question. Are you in any way related to the claimant, Thomas B. King?

Answer. I am not.

Question. Do you or not know the account now before you of the claimant to be correct?

Answer. I know that it is.

Question. Do you know anything further in relation to this claim?

Answer. I know what I have stated to be true, from the fact that I have resided ever since 1846 at Point Isabel and Brazos Santiago; and I know that, from 1846 to 1854, Thomas B. King was the branch pilot of the bar.

JOEL L. FILKINS.

STATE OF TEXAS, *County of Cameron.*

On the 31st day of May, A. D. 1856, personally came the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by me, and then proposed by me to the witness; and the answers thereto were written down by me in presence of the witness, who then subscribed the deposition in my presence.

Witness my hand and seal of office at Brownsville, county of Came-
[L. S.] ron, State of Texas, this May 31, 1856.

W. W. NELSON, *Clerk District Court.*

Depositions of Sterling E. Langdon, and E. M. Anderson, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Thomas B. King *vs.* the United States.

The adverse party was notified and did not appear.

S. E. Langdon sworn says:

Question. What is your name, your age, your occupation? where did you reside for the year past?

Answer. My name is Sterling E. Langdon; I am 33 years old; I am a clerk, and for the past year have resided at Point Isabel, Cameron county, Texas.

Question. Have you any interest, direct or indirect, in the subject of the claim now pending?

Answer. I have none whatever.

Question. Are you in anywise related to Thomas B. King, the claimant herein?

Answer. I am not.

Question. Do you or not know that Thomas B. King was the pilot for the port of Brazos Santiago from the early part of 1847 until 1854?

Answer. I know that he was the pilot for the port of Brazos Santiago from the early part of the year 1847, until the year 1854; I know that he was the pilot, for the reason that, at the time I was justice of the peace for precinct No. 1, in Nueces county Texas, and which precinct is now in Cameron county, since separated from Nueces county, in consequence of a suit brought before me to recover pilotage from the schooner Merchant, the captain of said schooner having refused to pay pilotage.

Question. Do you or not know the account now before you to be correct?

Answer. I believe the account is correct.

Question. Do you know anything further in relation to this claim?

Answer. I believe the claim to be a just one, and the services set forth in the account were faithfully performed.

S. E. LANGDON.

E. M. Anderson sworn says:

Question. What is your name, your age, your occupation? where did you reside for the year past?

Answer. My name is Edward M. Anderson; I am 32 years old; I am sheriff of Cameron county; I have resided for the past year at Brownsville in said county.

Question Have you any interest, direct or indirect, in the claim now the subject of enquiry?

Answer. I have none whatever.

Question. Are you in anywise related to Thomas B .King, the claimant herein?

Answer. I am not.

Question. Do you or not know the account now before you to be correct?

Answer. I know that T. B. King piloted all the government vessels in and out the harbor of Brazos Santiago, from the winter of 1848 and 1849 up to 1852.

Question. Do you know anything further in relation to this claim?

Answer. I was there at the time, in command of a United States steamer, and know that Captain King has good and efficient boats and men, and believe that he is entitled to remuneration for services rendered, that have never been paid for.

E. M. ANDERSON.

STATE OF TEXAS, *County of Cameron.*

On the 31st day of May, A. D. 1856, personally came the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by me, and then proposed by me to the witness; and the answers thereto were written down by me in presence of the witness, who then subscribed the depositions in my presence.

Witness my hand and seal of office at Brownsville, county of Came-
[L. S.] ron, State of Texas, this May 31, A. D. 1856.

W. W. NELSON, *Clerk District Court.*

STATE OF TEXAS, *County of Galveston.*

Answers of Henry Parker to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending the Court of Claims in the name of Thomas B. King, before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation? where did you reside for the year past? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. My name is Henry Parker, my age is seventy and one half years; I have had no fixed home for the past year; I am a sea-

man, and have for some fifteen years commanded my own vessels on the coast of Texas, and in the Gulf; I am in no way related to Thomas B. King, the claimant, (he and I, however, married sisters.)

Second question. Were you acquainted with the claimant in October or November, 1846?

Answer. Yes; and from the year 1837 until the present time.

Third question. Did you know that the claimant was acting as a pilot, on the bar of Brazos Santiago at any time; if so when did he commence, and when did he quit?

Answer. I first saw him acting as pilot on that bar in the summer or fall of 1846, and he continued to act as pilot on said bar for about three years, the exact time I cannot say; I was then commanding a vessel in the Brazos Santiago trade, and was frequently piloted over the bar by him; the last time I went down to that place or was in that port, was in the summer of 1833; I then was piloted over the bar by him.

Fourth question. Were you at any time or times towed in or out of the harbor of Brazos Santiago by government steamers without a pilot; if so, how often, and by what steamers, between 1846 and 1853?

Answer. I was frequently towed out by government steamers; perhaps not less than twenty times, and always without a pilot; I was towed by the steamers Anson and Monmouth, the government tow-boats.

Fifth question. Did you pay any sum of money to the commander or other officers of said boats, or other person or persons for being towed out; if so, how much, and to whom did you pay it?

Answer. When I wished to go out of the harbor, I stated the fact to the quartermaster, Major Thomas B. Eastland, who was then acting at that place; he gave me a written order or permit for which I on each occasion was required to pay to him the sum of twenty dollars; the form of the order given was as nearly as I can recollect thus: "Tow schooner × Star to sea, Eastland;" I did not understand the cross.

Sixth question. Was or was not the claimant acting under any legal authority as pilot?

Answer. Yes; he exhibited to me his commission as pilot from the governor of the State of Texas.

Seventh question. Do you or not know whether any vessel or vessels were towed into the harbor of Brazos Santiago by the government steamers, having no regularly commissioned pilot on board?

Answer. Yes; a great number of vessels were so towed into the harbor, but the names of any of them I cannot now recollect.

Eighth question. Did you or not always take a pilot when you went into that port?

Answer. Always when I wanted one. I sometimes went in without one.

Ninth question. During the time you knew the claimant to be acting as pilot at the Brazos Santiago, was or was he not attentive and diligent in performing his duties, and was he in your opinion a competent pilot?

Answer. I always found him attentive to his business; he was

prompt and energetic, and I regarded him as a safe and competent pilot; I frequently employed him when I thought the service of a pilot necessary.

HENRY PARKER.

Subscribed and sworn to this 16th day of January, A. D. 1856, before me,

J. W. MOORE, *Clerk D. C.*

STATE OF TEXAS, *County of Galveston, ss.*

On this sixteenth day of January, A. D. 1856, personally came Henry Parker, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down under the direction of the commissioner, and then proposed by him to the witness; and the answers thereto were written down under the direction of the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Henry Parker, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King.

Alexander and Atchison were notified, did attend, and did not object—they representing the United States.

J. W. MOORE, *Clerk, District Court.*

STATE OF TEXAS, *County of Galveston:*

Answers of William L. Sawyer to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King, taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation, and where did you reside for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you, in any degree, related to the claimant?

Answer. My name is William L. Sawyer; my age is forty-four years; my occupation is that of a mariner; I resided in Galveston for the past year; I have no interest in the claim, direct or indirect, which is the subject of inquiry; I am not in any way related to the claimant.

Second question. Were you or not acquainted with the claimant in October or November, 1846?

Answer. I was, and have been acquainted with him since 1844.

Third question. Do you or not know whether the claimant was acting as pilot on the bar of Brazos Santiago at any time; if so, when?

Answer. I knew him to be so acting as pilot from some time early in 1847 to some time in 1851.

Fourth question. Did you at any time command a vessel running into the harbor of Brazos Santiago?

Answer. I did, and was piloted over the bar by claimant; I was sailing vessels in and out of that harbor from May, 1846, to 1851.

Fifth question. Do you know whether or not the claimant was in any way interfered with, hindered, or obstructed in the execution of his duties as pilot, or in the collection of his fees for services rendered as pilot; if so, by whom and how?

Answer. Thomas B. Eastland was acting quartermaster at Brazos Santiago from the spring of 1847 to the fall of 1849; during that period said quartermaster was in the constant habit of employing government steamboats in towing vessels in and out of said harbor, for which he demanded a compensation; I on each occasion when the vessel I commanded was towed in or out paid the sum of twenty dollars, except upon one occasion when I commanded the steamer Franklin, I was charged eighty dollars for towing her in; upon one occasion the claimant claimed pilotage, and brought suit before a justice of the peace to recover the same against a schooner, the name not now recollected; during the progress of the suit an officer was placed on board of said vessel by the justice of the peace to detain her until the matter was settled; Major Eastland went aboard in person with an armed force and took possession of the vessel; Major Eastland at the same time drew a pistol on said officer and beat him with his cane, and afterwards took him on shore and imprisoned him.

Sixth question. What vessels did you command, sailing in and out of said harbor, during the time Major Eastland was acting as quartermaster, and what was the tonnage of each, and how much water did each draw, and what was the rate of pilotage?

Answer. I commanded the schooner Native, about sixty tons burden; she drew about six feet of water. I also commanded the schooner Euchenna, about forty tons burden; drew six feet of water. Also the schooner Spray, about thirty tons burden, drawing about four and-a-half feet. Also the schooner Adeline, about thirty tons burden; about five feet water. Also the steamboat Franklin, about two hundred and twenty tons burden, drawing about four feet water. The rate of pilotage is fixed by law at three dollars per foot.

Seventh question. How many times did you cross the bar at Brazos Santiago with the vessels above named, during the time that Major Eastland was acting quartermaster, for which you paid no pilotage to the claimant?

Answer. During the period named I crossed said bar with the schooner Native about eight times; with the Euchenna four times; with the Spray twice; with the Adeline once, and with the Franklin twice; on each of which occasions I was towed in and out by government steamers by orders of Major Eastland, except the steamer Franklin, which was towed in but not towed out.

Eighth question. Do you recollect the names of any of the vessels that were trading at Brazos Santiago during said period?

Answer. I recollect the names of the following vessels, to wit: brig Jasso, schooner Sylva Wilds, steamer Fanny, schooner Panama, schooner John Rolliff, schooner H. L. Scranton, steamer Fashion, schooner Robert Mills, schooner Visiter, steamer Telegraph, schooner Eufala, schooner Southerner, schooner Star, schooner Major Barbour, steamer General Butler, schooner Arispe, schooner Florinda, schooner P. M. Sears, schooner Emma Norton, schooner Hornet, schooner Heroine, schooner Jane Elizabeth, schooner Crescent City, schooner Sharon, schooner John Bell, schooner Florida, schooner Cinderella G. Scull, schooner Colonel Fannin, schooner David Coffin, schooner Susan, schooner Equity, schooner Midas, schooner Marantanett, schooner W. H. Hazard, schooner Jonathan Wainwright, schooner Madona, steamer Maria Burt, schooner Creole, schooner Louisiana, steamer Ohio, brig Mount Vernon, schooner Isbon, schooner John Randall, schooner George Lincoln, and many other vessels the names of which I do not now recollect.

Ninth question. From your knowledge of the bar and the duties of a pilot, do you or not deem the claimant a competent and well qualified pilot for that bar, and was or was he not attentive and diligent in the performance of his duties as such pilot?

Answer. I always found him attentive to his business; he was prompt and energetic, and I regarded him as a safe and competent pilot, and was always provided with good boats and competent assistants.

Tenth question. Did you or not ever know the claimant to speak vessels outside of the bar Brazos Santiago, which vessels refused the services of a pilot and were towed in by government steamers?

Answer. Yes; it was an every day occurence.

Eleventh question. State whether you know of any other matters relative to the claim in question.

Answer. I know but little else that is not contained in my foregoing answers; I do know, however, that most of the vessels named in my foregoing answers were private vessels, and that most, if not all, of them were towed in and out by government steamers; I know further that Major Eastland was in the constant habit of interfering with and obstructing the claimant in the performance of his duties as pilot.

W. L. SAWYER.

Subscribed and sworn to this 18th day of January, A. D. 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this 18th day of January, A. D. 1856, personally came Wm. L. Sawyer, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written under the direction of the commissioner and then proposed by him to the witness; and the answers thereto were written down under the direc-

tion of the commissioner, in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of William L. Sawyer, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of Daniel Phillips to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King; taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation? Where did you reside for the year last past? Have you any interest, direct or indirect, in the claim which is the subject of inquiry? And are you in any degree related to the claimant?

Answer. My name is Daniel Phillips, my age is thirty-six years; I have resided in Galveston, Texas, for the past year; my occupation is a grocer; I have no interest in the claim referred to; I am in no degree related to Thomas B. King, the claimant.

Second question. Were you acquainted with the claimant in October or November, 1846?

Answer. Yes; and from the year 1842.

Third question. Did you or not know that the claimant was acting as a pilot on the bar of Brazos Santiago at any time? If so, when did he commence and when did he quit?

Answer. I know that Thomas B. King acted as pilot on said bar from December, 1846 to September, 1847.

Fourth question. Did you or not know whether any vessel or vessels were towed into the harbor of Brazos Santiago by the government steamers, having no regularly commissioned pilot on board?

Answer. I know of one; the schooner "Merchant" was towed in and out of the harbor of Brazos Santiago by a government steamer, without having a regularly commissioned pilot on board. Thomas B. King, the claimant, sued said schooner "Merchant" for pilotage, before a justice of the peace. During the progress of the suit, an officer was placed on board said schooner, by the justice, to detain her until the matter was settled. Major Eastland, acting quartermaster, went on board in person, with an armed force, and took possession of the vessel; Eastland at the same time drew a pistol on said officer, and beat him with a cane, and afterwards took him on shore and imprisoned him.

Fifth question. During the time you knew the claimant to be acting as pilot at the Brazos Santiago, was or was he not attentive and

diligent in performing his duties, and was he in your opinion a competent pilot?

Answer. I always found him attentive to his business, prompt and energetic, and I regarded him as a safe and competent pilot.

Sixth question. What was your occupation during the time you knew the claimant to be acting as pilot at Brazos Santiago?

Answer. My occupation at that time was a mariner; I was acting as deputy wreck-master, and owned interests in several vessels, and commanded a vessel during that time.

Seventh question. Do you or not know that a number of vessels were towed in or out of said harbor of Brazos Santiago by government steamers without a regular pilot on board?

Answer. During the time the claimant was acting as pilot on Brazos Santiago bar, a large number of vessels were towed in and out by government steamers, without having any regular pilot on board; the names I do not recollect.

Eighth question. State whether you know of any other matter relative to the claim in question.

Answer. I know that Major Eastland frequently expressed hostile feelings against Thomas B. King, the claimant, and threw all the obstacles in his way in his power, to prevent King performing his duties as pilot.

DAN. PHILLIPS.

Subscribed and sworn to this 19th day of January, A. D. 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this 19th day of January, A. D. 1856, personally came Daniel Phillips, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition, were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Daniel Phillips, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C., G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of Russell Howard, to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King; taken before James W. Moore, clerk of the district court, of Galveston county, State of Texas.

First question. Did you or not make out an account in favor of Thomes B. King, against the United States government, for pilotage at Brazos Santiago?

Answer. I did make out an accout for Thomas B. King, for pilotage, against the United States government, in spring of 1851; the amount, to the best of my recollection, was two thousand dollars and upwards. Thomas B. King presented said account to Major Chapman, in my presence at Brazos Santiago; Major Chapman, then acting quartermaster, certified on his honor, that said account was correct.

RUSSELL HOWARD.

Subscribed and sworn to this 22th day of February, A. D. 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this 12th day of February, A. D. 1856, personally came Russell Howard, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Russell Howard, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King.

Alexander and Atchinson were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of George W. Parker to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King; taken before James W. Moore, clerk of the district court of Galvesten county, State of Texas.

First question. What is your name, your age, your occupation? Where did you reside for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. My name is George W. Parker; thirty-two years; a seaman; in Massachucetts; I have no interest whatever in the claim referred to; I am not related to the claimant, Thomas B. King.

Second question. Did or did not Thomas B. King pilot any government vessel commanded by you into Brazos Santiago whilst Major Thomas

B. Eastland was quartermaster at that port? Did you or not pay him for said pilotage?

Answer. Thomas B. King piloted the government schooner Sarah into Brazos Santiago, twice, under my command; I did not pay him any pilotage therefor. I inquired of Major Eastland to whom I should pay pilotage; he replied, "there was no pilotage to be paid;" my understanding was, that Major Eastland told me not to pay any pilotage to Thomas B. King.

Third question. Did you or not know any other regular pilot on Brazos Santiago bar at the time you traded there, and at the time Major Eastland was quartermaster, except Thomas B. King?

Answer At the time mentioned, I did not know any other regular pilot on Brazos Santiago, except Thomas B. King.

GEO. W. PARKER.

Subscribed and sworn to this 11th day of March, 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this 11th day of Mach, A. D. 1856, personally came Gorge W. Parker, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of George W. Parker taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King.

Alexander and Atchinson were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of Ambrose Crane to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King; taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation? Where did you reside for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry? And are you in any degree related to the claimant?

Answer. Ambrose Crane; aged 66 years; no definite occupation at present; in Galveston; I have no interest, direct or indirect, in said claim; I am not in any degree related to the claimant.

Second question. Were you acquainted with the claimant in July or August, 1847?

Answer. I have been acquainted with Thomas B. King, the claimant, since 1838.

Third question. Did you or not know that the claimant, Thomas B. King, was acting as a pilot on the bar of Brazos Santiago, at any time? If so, when did he commence and when did he quit?

Answer. I know that Thomas B. King acted as a pilot on the bar of Brazos Santiago, from 1847 to 1852, with the exception of one short absence.

Fourth question. Do you or not know that vessels were towed into and out of the harbor of Brazos Santiago, by steamers belonging to the goverment of the United States, having no regularly commissioned pilot on board, during the time that Thomas B. King, the claimant, was acting as pilot on said bar?

Answer. I know that a large number of vessels were towed into and out of the harbor of Brazos Santiago, by steamers belonging to the government of the United States, having no regularly commissioned pilot on board, during the time that Thomas B. King was acting as pilot on said bar of Brazos Santiago.

Fifth question. During the time you knew that Thomas B. King, the claimant, was acting as pilot at Brazos Santiago, Texas, was or was he not always well provided with pilot boats, and diligent and attentive in the performance of his duties as pilot; and was he, or was he not, in your opinion considered a competent pilot?

Answer. During the time that said Thomas B. King was acting as pilot at Brazos Santiago, he was always well provided with pilot boats; was prompt and energetic in the discharge of his duties as pilot, and I regarded him as safe and competent in that capacity.

Sixth question. Was or was not Thomas B. King the only commissioned pilot for the port of Brazos Santiago, from July, 1847, to 1850?

Answer. Thomas B. King was the only regular pilot on said bar of Brazos Santiago during the time mentioned.

Seventh question. Do you or do you not know whether Thomas B. King, the claimant, piloted government vessels into and out of Brazos Santiago, from November, 1848, until September, 1850, as shown in exhibit D?

Answer. I know that Thomas B. King, the claimant, piloted government vessels into and out of said harbor during the period mentioned.

Eighth question. Do you know any other matter relative to the claim in question? If so, state it.

Answer. I do not now recollect anything material in relation to the claim in question. I will, however, mention that I was acting as military storekeeper at Brazos Santiago when Thomas B. King was pilot as before stated, and had an opportunity to judge of his capacity and of his attention to business.

AMBROSE CRANE.

Subscribed and sworn to this 29th day of March, 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this 29th day of March, A. D. 1856, personally came Ambrose Crane, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then propounded by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Ambrose Crane, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B King.

Alexander and Atchinson were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of William H. Talbot to questions propounded at the request of Thos. B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Thomas B. King, taken before James W. Moore, clerk of the district court of Galveston, State of Texas.

First Question. What is your name, your age, your occupation? where did you reside the year last past? have you any interest, direct or indirect, in the claim which is the subject of inquiry? and are you in any degree related to the claimant, Thomas B. King?

Answer. William H. Talbot; 36 years; a mariner; in New Orleans; I have no interest in said claim; I am in no way related to the claimant.

Second question. Were you acquainted with the claimant in July 1847 or 1848?

Answer. I was in 1847 and 1848.

Third question. Did you or did you not know that the claimant was acting as pilot on the bar of Brazos Santiago, Texas,? if yea, when did he commence, and when did he quit?

Answer. I know that the claimant was acting as pilot on said bar in the years 1847, 1848, and 1849.

Fourth question. Do you or do you not know of any vessels towed in and out of Brazos Santiago during the years 1847 and 1848, by the government tow-boats, without the assistance of any branch or deputy pilot? if yea, name them.

Answer. The schooner St. Paul in 1847, and the schooner George Lincoln in 1848, were towed in and out by government steamers, both of which I was interested in.

Fifth question. Do you or do you not know whether any compensation was received by the commanders of government tow-boats, or by the quartermaster at Brazos Santiago, for taking vessels in and out of said harbor? if yea, state how much.

Answer. I paid quartermaster Eastland twenty dollars each way for both of the schooners named in my last answer; on one occasion I paid said Eastland $120 for towing schooner George Lincoln in and out, for which I have his receipt.

Sixth question. Do you or do you not know that Thomas B. King was the only commissioned pilot at Brazos Santiago at the time mentioned?

Answer. I do not know.

Seventh question? Do you know of any other matter relative to the claim in question? if so, state it.

Answer. I have stated all I know in relation to the claim in question.

WM. H. TALBOT.

Subscribed and sworn to this 10th day of April, 1856, before me.

J. W. MOORE,
Clerk D. C. C. G.

STATE OF TEXAS, *County of Galveston, ss:*

On this tenth day of April, A. D. 1856, personally came William H. Talbot, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of William H. Talbot, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk District Court Galveston County, State of Texas.

STATE OF TEXAS, *County of Galveston:*

Answers of Robert J. Roberts to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King, taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation? where did you reside for the year past? have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. Robert J. Roberts; twenty-six years; a painter; in Galveston; I have no interest whatever in the claim, and am in no way related to the claimant.

Second question. When and where did you become acquainted with the claimant? what was he engaged in at that time?

Answer. I became acquainted with the claimant, Thomas B. King, in 1846 ; he was pilot at Brazos Santiago, and continued as such up to 1850.

Third question. During the time you knew the claimant as pilot at the Brazos Santiago, Texas, was he or was he not always well provided with pilot boats, and diligent and attentive in the performance of his duties? Was he or was he not a competent pilot?

Answer. During the time before stated, the claimant was always provided with good boats, was diligent and attentive, and was considered a good and competent pilot.

Fourth question. Was or was not said King and his assistants constantly in the habit of speaking vessels outside Brazos Santiago bar, and offering their services to pilot vessels in and out?

Answer. Said King and his assistants were constantly in the habit of speaking vessels as asked, and offering their services to pilot them ; whenever vessels appeared off said bar, said King's boats were always outside and near the vessels, and ready to pilot them.

Fifth question. Do you or do you not know of any other matter relative to the claim in question? if yea, state it.

I have stated all I know relative to the claim in question.

ROBERT J. ROBERTS.

Subscribed and sworn to this 23d day of April, 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this twenty-third day of April, A. D. 1856, personally came Robert J. Roberts, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Robert J. Roberts, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston:*

Answers of John S. Rhea to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Thomas B. King, taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. What is your name, your age, your occupation? where did you reside for the year past? have you any interest, direct

or indirect, in the claim which is the subject of inquiry, and are you in any degree related to the claimant?

Answer. John S. Rhea; forty-nine; a merchant; in Galveston, Texas; I have no interest in said claim, and am in no degree related to the claimant.

Second question. When and where did you become acquainted with Thomas B. King, the claimant?

Answer. I became acquainted with said King early in 1847 at Brazos Santiago, when he was pilot on Brazos Santiago bar.

Third question. During what period were you in office as collector at Point Isabel, and who was pilot at Brazos Santiago during that time?

Answer. I was in said office from May, 1849, until May 1853, and said King was pilot on said bar during all that period.

Fourth question. Did or did not said King pilot all the vessels belonging to the United States government during the years 1849 and 1850?

Answer. To the best of my recollection said King piloted all said vessels up to the time said vessels were sold.

Fifth question. Do you know any other matter relative to the claim in question? if yea, state it.

Answer. I have stated all I know in relation to said claim.

JOHN S. RHEA.

Subscribed and sworn to this 23d day of April, 1856, before me.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston, ss:*

On this twenty-third day of April, A. D. 1856, personally came John S. Rhea, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of John S. Rhea, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk D. C. G. C.

STATE OF TEXAS, *County of Galveston.*

Answer of Daniel Philips, to questions propounded at the request of Thomas B. King, with the consent of the attorney representing the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King, taken before James W. Moore, clerk of the district court of Galveston county, State of Texas.

First question. Did you ever see a notice, a copy of which, marked A, is now exhibited, posted up at Brazos Santiago, signed by Thos. B. Eastland, quartermaster?

Answer. In 1847, I saw a notice posted at the quartermaster's office, Brazos Santiago, signed by Thomas B. Eastland, quartermaster; the paper exhibited to me, marked A, is a true copy of the said notice.

Second question. Examine the letter exhibited to you, marked B, and state, if you know, whose handwriting it is?

Answer. I have examined the letter marked B, and I am positive it is the handwriting of Thomas B. Eastland, quartermaster.

DAN. PHILLIPS.

Subscribed and sworn to this 24th day of April, A. D. 1856, before me.

J. W. MOORE,
Clerk District Court, Galveston County.

STATE OF TEXAS, *County of Galveston, ss:*

On this twenty-fourth day of April, A. D. 1856, personally came Daniel Phillips, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Daniel Philips, taken at the request of Thomas B. King, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Thomas B. King. Alexander and Atchison were notified, did attend, and did not object, they representing the United States.

J. W. MOORE,
Clerk District Court, Galveston County, State of Texas.

Commissioner's fees $25.

A.

BRAZOS SANTIAGO,
Quartermaster's office, June 4, 1847.

From and after this date no pilotage will be paid on government vessels, unless by written order of the undersigned. From and after this date vessels coming to this port loaded with government property may, at the option of their commanders, employ pilots or not. Government boats will, for the present, take them in and out free of charge. From and after this date all vessels when discharged, must haul out from the wharves, unless otherwise ordered, as soon as discharged, or pay a fine of twenty-five dollars, for the benefit of the hospital at this port.

THOS. B. EASTLAND,
Major and Quartermaster, U. S. Army.

B.

QUARTERMASTER'S OFFICE,
Brazos Satiago, July 10, 1847.

SIR: From information just received, upon which I rely, it seems to be the determination of the friends of the man murdered a few nights since, by a party of Mexicans, to take away the life of one of them, (*to-night,*) who it seems, has been identified as being concerned. I think it proper to give you, as the acting magistrate of this district, and consequently the guardian of the law, this information.

Respectfully,

THOS. B. EASTLAND,
Quartermaster, U. S. A.

THOS. B. KING,
Magistrate, &c., Brazos Santiago.

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,

To all to whom these presente shall come, greeting:

Know ye, that I, J. Pinckney Henderson, governor of the State of Texas, reposing special trust and full confidence in the honor and patriotism, fidelity and capacity of Thomas B. King, have constituted and appointed, and do by these presents constitute and appoint him, the said Thomas B. King, to the office of justice of the peace for the county of Nueces, town of Brazos Santiago, to which he was duly elected on the —— of July, A. D. 1847, giving and hereby granting to him, the said Thomas B. King, full power and authority, as such to exercise and discharge, all and singular, the duties, rights, obligations and trusts, under the constitution and laws, to his said office incident or appertaining; to have and hold the same, with all and every the immunities and honors, perquisites and emoluments thereunto belonging, for and during and until the full end and term of his said appointment.

In testimony whereof, I have caused the seal of the State to be here-
[L. S.] unto affixed.

Done at Austin, this twelth day of July, in the year of our Lord, one thousand eight hundred and forty-seven.

J. PINCKNEY HENDERSON.

By the governor.
DAVID G. BURNET,
Secretary of State.

THE STATE OF TEXAS,
Executive Department.

I, the undersigned governor of the State aforesaid, do hereby certify that Thomas B. King was duly appointed branch pilot for the port of Brazos Santiago, and as such commissioned on the twenty-third day

of November, A. D. 1846, and that he continued to act as branch pilot for said port of Brazos Santiago, until the twenty-seventh day of January, A. D. 1854.

In testimony whereof I have hereunto signed my name, and caused the great seal of the State to be affixed, this the 13th day of
[L. S.] February, A. D. 1856, and of the independence of Texas the twentieth year.

By the governor. E. M. PEASE.

EDWARD CLARK, *Secretary of State.*

IN THE COURT OF CLAIMS.

On the petition of Thos. B. King.

WASHINGTON, D. C., *September* 15, 1855.

The undersigned agree to take depositions on the part of the above named petitioner, without notice as required by the rules of court, before the clerk of the county court for the county of Cameron, in the State of Texas, at his office in said county, under the following arrangement: The Solicitor of the United States will designate some attorney, resident in said county, to attend the taking of said depositions, and represent the United States, who is hereafter to be made known to said claimant by said Solicitor, or William Alexander, esq., of the city of Galveston, in said State, and the said claimant, when ready, to proceed with the taking of his depositions, shall give said attorney notice thereof.

M. BLAIR,
Solicitor United States.
A. H. EVANS,
Attorney for Petitioner.

Evidence for the United States.

Letter of the Secretary of War to M. Blair, Solicitor, dated September 25, 1855, and accompanying papers.

Letter of the Quartermaster General, to J. D. McPherson, deputy Solicitor, dated September 11, 1858, and accompanying papers.

Letter of same to same, October 7, 1858.

Report of Major Chapman, October 15, 1858.

Letter of Quartermaster General to deputy Solicitor, December 27, 1858.

J. D. McPHERSON, *Deputy Solicitor.*

WAR DEPARTMENT,
Washington, September 25, 1855.

SIR: In reply to your letter of the 15th instant, asking information respecting the claims of Thomas B. King, for services performed or tendered as branch pilot at the port of Brazos Santiago, during the

war with Mexico, I herewith enclose a report of the acting quartermaster general, containing all that the records furnish on the subject.

First lieutenant Julius P. Garesche, 4th artillery, at Brownsville, Texas, will be able to suggest the name of an attorney to attend to the examination of witnesses on the part of the claimant.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

M. BLAIR, Esq.,
Solicitor of the Court of Claims, Washington, D. C.

QUARTERMASTER GENERAL'S OFFICE,
Washington, September 24, 1855.

SIR: I herewith return the letter of M. Blair, Esq., United States Solicitor to the Court of Claims, dated the 15th instant, and the petition of Thomas B. King setting up a claim against the United States in part on account of services which he alleges were actually rendered by him as pilot at the port of Brazos Santiago, Texas, and in part for fees to which he claims to be entitled in virtue of his office, having offered to perform the service and not being permitted to do so, &c., and I have the honor to report in regard to his claim for $2,014 50, for services rendered (between November, 1848, and November, 1850,) that he presented on the 13th of March, 1852, at this office, through W. G. Snethen, esq., an account for piloting certain public vessels in and out of that port between those periods of time, and that it was rejected, after due examination, on the ground that Captain King (the pilot)was, at and duringthe time that he charged pilotage, actually in the service of the Quartermaster's department, as master of a public steamer, and paid at a fixed rate of monthly compensation, and that all the vessels for which pilotage was charged were towed in and out of the harbor by the public steamer under his command, without any pilot being on board of them, &c. (See copy of a letter of the Quartermaster General to W. G. Snethen, esq., dated April 19, 1852, herewith, marked A.

In regard to the claims which he sets up for pilotage which he had a right to perform by virtue of his office, and where he states his services were refused, I have to remark that during the war with Mexico the Quartermaster's department generally, if not in all cases, piloted its own vessels (public) and did not recognize the rights or claims of any pilots commissioned by the governor of Texas to pilot public vessels, unless specially employed as private individuals by proper authority, when they were paid a reasonable compensation for their services. (See paper marked B.)

During the war with Mexico, the department had steamers at that port, the masters of which acted as government pilots, and they towed in and out of the harbor the government vessels, and if at any time the Texas pilots were on board such vessels, and they were not there by any recognized authority, they were not paid.

In regard to *private* chartered vessels which were towed in and out

of the said harbor by the United States steam tow-boats I have to remark that it was optional with the masters of said private vessels to employ a Texas pilot, or not as they judged proper. In many instances it is believed they did employ them, to secure their insurance in case of damage in crossing the bar; in others they did not, especially when not insured. As far as this office is informed its officers never interfered in the matter, one way or the other. If the masters of such private vessels refused to accept of the services, or employ, or pay, a State pilot, it was an affair between the parties concerned; it was no concern of the public, as it did not pay the pilotage of private or chartered vessels.

In regard to the correctness of the amounts claimed under exhibits A. B. and C. this office has no means of judging.

I remain, sir, very respectfully, your obedient servant,

CHS. THOMAS,
Acting Quartermaster General.

Hon. JEFFERSON DAVIS,
Secretary of War, Washington, D. C.

ASSISTANT QUARTERMASTER'S OFFICE,
Brazos Santiago, Texas, April 1, 1852.

GENERAL: I had the honor to receive to-day your letter of March 16 relative to the claim of Captain Thomas B. King for pilotage.

The following are the facts of this case: Captain King only presented this account to me some two or three months since. I declined to pay it, but told him he could if he chose refer it to you. I declined to pay it for the following reasons: Captain King was master of the United States steamer "Anson" during the time for which he has charged pilotage on public vessels; he was at the same time a regularly commissioned pilot for the harbor of Brazos Santiago. The public vessels on which he has charged pilotage were towed in and out of the harbor by the steamer "Anson," he being on board in every instance. At the time I appointed Captain King master of the "Anson" nothing was said by either, or even thought of by me, about pilotage, and no mention was made of the subject until he spoke to me of his claim two or three months since. I was in doubt whether he could, under the circumstances, *legally* claim said pilotage, and determined to leave the matter to your decision. I therefore only signed a certificate to the effect that he was a pilot for the port of Brazos Santiago; that he had piloted in and out certain vessels, and that he had received no compensation. I knew full well at the time I signed the certificate, and so told Captain King, that you would not admit the account until it had been referred to me, when I intended to make a statement of the above facts in the case, and leave the *legality* of the claim to be decided by you.

During the war with Mexico all public vessels were, I believe, towed in by government steamers, but the masters were not commissioned pilots. When they towed in private vessels they charged no pilotage, whereas Captain King while he commanded the "Anson" did, while

I at the same time charged towage, and credited the amount to the government.

During the war no vessels, public or private, crossed the bar without a pilot, unless they were towed by a government steamer, and since the loss of the steamer "Anson" *no* captains of vessels will cross the bar without a pilot.

You will observe from my accounts that, after the loss of the "Anson," up to the time the public schooners were sold, I always paid the regular pilotage on them.

I regret that my declining to pay this claim and letting it take the course it has, which I considered to be proper, has not met with your approval.

I have the honor to be, general, most respectfully, your obedient servant,

W. W. CHAPMAN,
Acting Quartermaster.

Major General T. S. JESUP,
Quartermaster General, Washington, D. C.

QUARTERMASTER GENERAL'S OFFICE,
Washington city, April 14, 1852.

SIR: I have received your letter of the 1st instant, and regret to find that it leaves the matter in regard to Thomas B. King's claim in a much worse position, as it regards yourself as an officer of the Quartermaster's department, than your certificate to his account had placed it. As an employee of the department Mr. King was not entitled to pay as a pilot, and in making the guarded certificate which you attached to his account, you should not have concealed the fact that he was actually at the time for which he charged in the pay of the government as the captain of one of the steamers. The course which you have thought proper to pursue in this matter is deserving of the severest rebuke. * * * * *

It was a matter of surprise when the account of Mr. King was received here, that an officer of your experience should have allowed an account to run up under your own eye for so large an amount, which, if correct, you should have paid at least quarterly; and it is a matter of still greater surprise that, in certifying to such an account, you should have allowed it to be presented to me, when you knew that the most important fact bearing upon the case had been carefully concealed from me. The agent for the claim here founds his argument for the payment of it upon your certificate.

I am, sir, &c.,

TH. S. JESUP,
Quartermaster General.

Major W. W. CHAPMAN,
A. Q. M., Brazos Santiago, Texas.

B.

Reasons why the pilots appointed by the governor of Texas for the port of Brazos Santiago during the war with Mexico were not recognized by the Quartermaster's department during said war.

When Texas was incorporated into this Union, her Mexican boundary was unsettled. Mexico held the country to the desert, about midway between Corpus Christi and the Rio Grande; and though Texas had a contingent claim on the territory from the desert to the Rio Grande, founded upon an arrangement with Santa Anna and his generals, and upon her own laws, yet, being at war with Mexico and the causes of the war being her own independence and the territory she claimed, she had an absolute right only so far as she had conquered and was able to hold. Mexico being in military possession of the territory in dispute had a right to hold it if she could, and the title to it depended upon her ability to hold it. Texas was admitted into the Union without any fixed boundary on the side of Mexico, she claiming to the Rio Grande in its whole length and Mexico to the Sabine; but she gave to the United States the right to adjust this disputed boundary. The war was still going on, and though we sent a minister to Mexico and endeavored to negotiate, we became a party to it.

We had taken the place of Texas, and had assumed her claim, but it required two parties to settle the boundary, and it was not until the treaty of Guadalupe was ratified that the port became ours, and consequently a part of Texas, and that any pilot could be legally appointed for it by the State of Texas. So far as the United States was concerned, up to that time it was a belligerent territory, subject to the result of the war. General Taylor had taken possession of it by order of the government, but to maintain himself in it he was compelled to fight two bloody battles. General Taylor had a right to be there, and to use any part of it that might be necessary to give effect to his operations. Brazos Santiago, being a convenient harbor, it was occupied by military force, and it was held by said force as a military station until the close of the war. It was held as a conquered country by military law, and Texas had no legal right to exercise any civil jurdiction over it, or to commission pilots to act as such for the public vessels of the United States loaded with military stores and supplies. The right was never recognized in my opinion by General Taylor.

CHS. THOMAS,
Acting Quartermaster General.

QUARTERMASTER GENERAL'S OFFICE,
Washington city, September 24, 1855.

QUARTERMASTER GENERAL'S OFFICE,
Washington, September 11, 1858.

SIR: In reply to your note of 9th ult., enclosing a petition of Thos. B. King claiming compensation amounting to $13,464 for services as

branch pilot at Brazos Santiago, for the pilotage as he alleges of vessel of the United States which entered that harbor from 1846 to 1850, I have to state that, from a careful examination of the records of this office, I do not find that Mr. King's claim as presented here has ever exceeded $2,017 50.

I would not recognize his claim during the war, because he had no right to be at Brazos Santiago; and, if he had the right, I was not bound to recognize him in the public service. Congress alone has authority under the Constitution of the United States to make laws for the government of the army, and in performance of my duty under the laws of the United States I had provided proper and suitable lighters and pilots to bring all transports safely into the depot; but, apart from this, there was a principle of public law applicable to the case, which would bar his claim to service there so long as the war continued. The governor of Texas had no doubt authority to grant the commission to Mr. King of branch pilot at Brazos Santiago; but that commission, from the circumstances attending the admission of Texas into the Union, remained in abeyance in the conquered territory during the continuance of the war.

The territory over which Texas could exercise authority extended only so far on the side of Mexico as she had conquered and had been able to hold when she was admitted into the Union; her jurisdiction did not extend with the conquest of the territory, for she had given authority to the United States to settle her boundary to the west. To do that required the action both of the government of the United States and that of Mexico. The line was not and could not be settled by conquest. It was settled by the treaty which closed the war. On the ratification, or rather on the publication, of the treaty of peace, the right of Texas to the whole territory to the Rio Grande became absolute, and the commission of Mr. King up to that time in abeyance then took effect. Not having his claims before me I cannot speak of them in detail, but the objection to those subsequent to the war was that Mr. King was in the public service, in command or on board of a public steamer, receiving a salary from the United States for the very service for which it appears he claims a second compensation. From my view of my own duties I was not bound to employ him even in peace; but, waiving that question, I was certainly not bound to pay him a second time for the same service.

From the large amount of his claim, he must have charged for the pilotage of chartered vessels. With them the public had nothing to do, as we were not bound either for pilotage or lighterage, though the public pilots and lighters brought them into the harbors gratuitously.

I submit a brief of the facts exhibited by the files of this office in relation to the claim of Mr. King as presented here, and am

Most respectfully, your obedient servant,

TH. S. JESUP,
Quartermaster General.

J. D. McPHERSON, Esq.,
Deputy Solicitor Court of Claims, Washington, D. C.

BRIEF.

Case of Thomas B. King, presented by Worthington G. Snethen, March 13, 1852, *to the Quartermaster General.*

CLAIM. Pilotage at Brazos Santiago, Texas, from November 19, 1848, to November 16, 1850, $2,017 50.

How substantiated. "I certify that Captain Thomas B. King, branch pilot at the port of Brazos Santiago, Texas, did pilot in and out the vessels as mentioned in the above account belonging to and in the service of the government of the United States, for which he has received no compensation. Brazos, Santiago, February 15, 1852.

"W. W. CHAPMAN,
"*Brevet Major and Ass't Qr. M.*"

On the claim book the following "remarks" refer to this case, viz:

"The account returned to Mr. Snethen with a letter dated April 19, 1852, with the following remarks endorsed on the account:

"It appears by Brevet Major W. W. Chapman's report, dated at Brazos Santiago, April 1, 1852, that Thomas B. King was, during the time these charges are made for pilotage, actually in the employment of and paid by the government as master of a public steamer, at a fixed rate of compensation; and that the vessels for which pilotage is charged were towed in and out of the harbor.of Brazos Santiago by the steamer under his command. Mr. King is not entitled to pay as pilot, he having been paid in full for his services in another capacity."

"Quartermaster General's Office, April 19, 1852."

On the 19th of March, 1852, Mr. Snethen (the attorney in this case) was informed that Major Chapman's certificate was defective in form and substance, "not stating, as it should do, that the charges are correct and just, that the services were performed by his direction, and that they were necessary for the public service;" and that Major Chapman had been instructed to report such facts as might be necessary to a proper understanding of the matter.

On the 19th of April, 1852, Mr. Snethen was informed that Major Chapman reports King as in the government service, commanding a government steamer, and paid at a fixed rate of compensation for the time in which said service as pilot was charged; and that the pilotage so charged was for vessels towed in and out of the harbor by said government steamer under his command. That the public was entitled to all his services while employed by government, and that he did no more than all other masters of public steamers in towing in and out the harbor of the Brazos. That said King never claimed pilotage until he asked for Major Chapman's certificate heretofore given, and that Major Chapman, doubting his being entitled to pilotage, signed the certificate as it is, expecting to be called upon for a report of the facts in the case.

Mr. Snethen is further informed that the case cannot be allowed, and that the papers are returned.

On the 24th of September, 1855, Colonel Charles Thomas, acting quartermaster general, makes a report in this case to Honorable Jeff.

Davis, Secretary of War, through whom the said case had been received from M. Blair, Solicitor of the Court of Claims.

In said report Colonel Thomas states the facts of the presentation of the claim (through Snethen) to this office, and the causes of its rejection. This is the claim for $2,017 50.

As regards the cases where he had a right to perform as pilot, and where his services were refused: The Quartermaster's department, during the Mexican war, piloted its own public vessels, and did not recognize the right of any pilot commissioned by the governor of Texas to pilot public vessels, "unless specially employed as private individuals by proper authority," &c.

As regards *private* chartered vessels: The Quartermaster's department had nothing to do with their pilotage; it was an affair of the captain or owner alone, and the United States had nothing to do with it, nor has this office any means of ascertaining the correctness of the amounts claimed in these cases.

Accompanying this report to the Secretary is a copy of a letter to Snethen, of April 19, 1852, (before recited,) and a copy of a letter to Major W. W. Chapman of March 16, 1852, (also noticed,) marked A, and the following copy of a paper, marked B:

"When Texas was incorporated into this Union, her Mexican boundary was unsettled; Mexico held the country to the desert, about midway between Corpus Christi and the Rio Grande, and though Texas had a contingent claim to the territory from that desert to the Rio Grande, founded upon an arrangement with Santa Anna and his generals, and upon her own laws, yet being at war with Mexico, and the causes of the war being her own independence and the territory she claimed, she had an absolute right only so far as she had conquered and was able to hold. Mexico, being in military possession of the territory in dispute, had a right to hold it if she could, and the title to it depended upon her ability to hold it. Texas was admitted into the Union without any fixed boundary on the side of Mexico, she claiming to the Rio Grande in its whole length, and Mexico to the Sabine, but she gave to the United States the right to adjust the disputed boundary. The war was still going on, and though we sent a minister to Mexico and endeavored to negotiate, we became a party to it."

"We had taken the place of Texas, and had *assumed* her claim; but it required two parties to settle the boundary, and it was not until the treaty of Guadalupe was ratified that the port became ours, and consequently a port of Texas, and that any pilot could be legally appointed for it by the State of Texas. So far as the United States were concerned up to that time, it was belligerent territory, subject to the result of the war. General Taylor had taken possession of it by order of the government, but to maintain himself and it he was compelled to fight two bloody battles. General Taylor had a right to be there, and to use any part of it that might be necessary to give effect to his operations. Brazos Santiago being a convenient harbor, it was occupied by military, and it was held by said force as a military station until the close of the war. It was held as a conquered country by military law, and Texas had no legal right to exercise any civil jurisdiction over it, or to commission pilots to act as such for the public

vessels of the United States, loaded with military stores and supplies. The right was never recognized, in my opinion, by Gen. Taylor.

CHAS. THOMAS,
Acting Quartermaster General.

SEPTEMBER 2, 1855.

The Quartermaster General to the Deputy Solicitor.

QUARTERMASTER GENERAL'S OFFICE,
Washington, October 7, 1858.

SIR: In reply to inquiries contained in your letter of the 27th ultimo, relative to the case of Thomas B. King, it is found that Major Chapman entered upon duty as quartermaster at the Brazos Santiago in 1850, on the 14th of January of that year, and the Anson was lost on the 25th November, of same year, on her passage from the Brazos to New Orleans, and under the command of Captain Thos. B. King. Major Chapman, at New York, promises a full answer to the inquiry so soon as he can obtain his papers from Massachusetts.

Very respectfully, your obedient servant,

THOS. S. JESUP,
Quartermaster General.

JNO. D. MCPPERSON, Esq.,
Deputy Solicitor Court of Claims, Washington.

Major Chapman's Report.

ASSISTANT QUARTERMASTER'S OFFICE,
New York, October 15, 1858.

GENERAL: I had the honor duly to receive your letter of the 2d instant.

On an examination of my letter-books I do not find any report of the loss of the steamer Anson. As, however, she had been transferred to Colonel Hunt, and as the Captain (King) and crew reported to him in New Orleans after she was wrecked, I presume Colonel Hunt reported her loss to you. She left Brazos Santiago, for New Orleans, in November, 1850.

As after the final settlement of all my accounts last year, I destroyed all my accounts and rolls, I cannot tell when Captain King entered the service as commander of a steamer at Brazos Santiago. His service terminated when the Anson was lost, and was continuous to that time for some two years previous. My pay-rolls in the Third Auditor's office will show his exact service.

I have the honor to be, general, very respectfully, your obedient servant,

W. W. CHAPMAN,
Brevet Major and Ass't Quartermaster.

Maj. Gen. T. S. JESUP,
Quartermaster General, Washington, D. C.

A true copy,

W. W. CHAPMAN,
Ass't Quartermaster.

The Quartermaster General to the Deputy Solicitor.

QUARTERMASTER GENERAL'S OFFICE,
Washington, December 27, 1858.

SIR: Your letter of the 21st inst., relative to the service of Thos. B. King, &c., has been received, and the following is the only information relative thereto which is furnished by the records of this office:

Thomas B. King is reported by Major W. W. Chapman, assistant quartermaster, Brazos Santiago, on the 20th February, 1849, as master of steamer Monmouth, and so continues to be reported until July 31, and from August 1, 1849, to October 31, 1850.

The Anson was lost on the 25th November, 1850, *en route* from the Brazos to New Orleans, and no record can be found of the employ of said King after the latter date.

Very respectfully, your obedient servant,

HENRY C. WAYNE,
Bvt. Maj. Ass't Quartermaster, in charge of the office.

J. D. MCPHERSON, Esq.,
Dep. Solicitor Court of Claims, Washington, D. C.

IN THE COURT OF CLAIMS.

THOMAS B. KING *vs.* THE UNITED STATES.

Brief for Petitioner.

The claim for pilotage is to be found in the several schedules annexed to the petition, and marked schedules A, B, C, D.

Schedule A. shows the amount due for piloting vessels in and out, belonging to the government of the United States, from June 1, 1847, to August, 1847, to be $396.

This amount is established by the certificates of Major Eastland, (quartermaster,) and payment was refused on the ground that he had given notice that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, and this had never been given.

Schedule B. shows the account due for pilotage where the service was refused by government vessels spoken by said King, certificates of service having been refused by order of said Eastland, between June 1, 1847, and October 31, 1848, to be $5,638 50, being half pilotage, as provided by the act of Texas.

Schedule C. shows the amount of pilotage on vessels piloted and towed in and out by United States steamer, on the order of said Eastland, between June 1, 1837, and October 31, 1848, to be $5,415.

Schedule D. shows the amount of pilotage on government vessels which were piloted in and out by petitioner between November 1, 1848, and December 1, 1850, to be $2,014 50.

This last account is certified to by Quartermaster Chapman, (p. 46.) The depositions were taken in this case under an agreement with the

Solicitor, which will be found at p. 86. The above schedules were submitted to the witnesses, and are proved by them.

John Graham testifies that he was in the employ of the quartermaster the whole time the account accrued, and that he knows it "to be true and correct." (p. 66.)

Joel L. Filkins testifies that he knows it to be correct; that he resided since 1846 at Point Isabel and Brazos Santiago, and that from 1846 to 1854 King was the branch pilot. (p. 67.)

S. E. Langdon testifies that he was a justice of the peace for precinct No. 1 in Nueces county, which precinct is now in Cameron, having been separated from it; that he believes the claim to be a just one, and that the services set forth were faithfully performed. (p. 68.)

E. M. Anderson testifies that he knows that the petitioner "piloted all the government vessels in and out of the harbor from the winter of 1848–'9 up to 1852;" that he was then in command of a government steamer, and knew that King had good and efficient boats and men, and believes that he is entitled to remuneration for services rendered that have never been paid for. (p. 69.)

Henry Parker testifies that between 1816 and 1853 he was towed in and out "perhaps not less than twenty times by the government towboats Anson and Monmouth without a pilot;" that when he wished to go out, Eastland, the quartermaster, gave him a written permit, "for which on each occasion I was required to pay him the sum of $20." The form as follows: "Tow schooner + Star to sea." He further testifies that he knows that "a great number of vessels" were towed into the harbor by the government steamers. (p. 70.)

William L. Sawyer testifies that between the spring of 1847 and the fall of 1849, when Eastland was acting as quartermaster, he constantly employed government steamboats in towing vessels in and out, for which he demanded compensation; that the witness, whenever towed in or out, himself paid $20, except on one occasion; that when he commanded the Franklin he was charged $80 for towing her in. In answer to the sixth interrogatory, the witness then describes the various vessels he had commanded—five in number—which entered the harbor; and in answer to the seventh interrogatory, he describes the number of times that each crossed the bar, on all of which occasions the said vessels were towed by the government steamer by order of Eastland. In answer to the eighth interrogatory, he gives the names of forty-five vessels recollected by him that were trading at Brazos during that period. And further, that he knows that most of these vessels were private, and most, if not all, were towed in by government steamers. (p. 73.)

Daniel Phillips testifies that he knew King was acting as pilot from December, 1846, to September, 1847, and that during that time a large number of vessels were towed in and out by government steamers without a regular pilot on board. Witness describes the case of the Merchant, and the suit by King against her for pilotage; that an officer had been placed on board by the magistrate to detain her until the suit was adjudicated, and that Eastland went with an armed force and took her out of the custody of the officer, &c. (p. 74.)

George W. Parker testifies that King piloted the government schooner Sarah twice while under his command; that he did not pay for it; that Eastland told him no pilotage was to be paid; that he did not know of any other regular pilot than King. (p. 77.)

Ambrose Crane testifies that he was acting as military storekeeper when King was pilot, that is, from 1847 to 1852; that he knew a large number of vessels were towed in and out, during that time, by government steamers having no regularly commissioned pilot on board; that King was well provided with pilot boats, and was prompt and energetic in the discharge of his duties. He further says, in answer to the interrogatory referring to exhibit D: "I know that King piloted government vessels into and out of said harbor during the period mentioned." (p. 78.)

William H. Talbot testifies that the schooner St. Paul, in 1847, and the schooner Lincoln, in 1848, were towed in by government steamers; that he paid Eastland $20 each way for each of them, and that, on one occasion, he paid Eastland $120 for towing the Lincoln in and out. (p. 80.)

Robert J. Robert testifies, that he knew King, as pilot, from 1846; that he was always diligent and attentive; that he was well provided with boats; and that he and his assistants were constantly in the habit of speaking vessels outside and offering their services. Whenever vessels appeared off the bar, King's boats were always outside ready to pilot them. (p. 81.)

John S. Rhea testifies, that he was collector of the port from May, 1849, to May, 1853, and that, to the best of his recollection, King piloted all the government vessels during this period up to the time the said vessels were sold. (p. 82.)

These depositions fully established the account as set forth in the schedules A, B, C, D. The commission to King from the governor of Texas bears date 23d November, 1846. (p. 85.)

The payment of the sums demanded in schedule A, B, C is resisted on the ground that the department did not recognize the right of any pilot commissioned by the governor of Texas. That during the war the government had steamers, the masters of which acted as pilots. That this portion of Texas was held as a conquered country by the United States forces under military law, and that Texas had no legal right to exercise any civil jurisdiction over it, or to commission pilots. (Major Thomas, 88, 90.)

To the same effect General Jesup:

"The government of Texas had no doubt authority to grant the commission to Mr. King of branch pilot at Brazos Santiago, but that commission, from the circumstances attending the admission of Texas into the Union, remained in abeyance in the conquered territory during the continuance of the war. The territory over which she could exercise authority extended only so far on the side of Mexico as she had conquered and had been able to hold when she was admitted into the Union. Her jurisdiction did not extend with the conquest of the territory, for she had given authority to the United States to settle her boundary to the west. Until the ratification of the treaty of peace, the right to the whole territory was not complete

in Texas, and until that time King's commission was in abeyance." (p. 91.)

Whatever was the true boundary of the original *province* of Texas, while it was held as part of Louisiana, or subsequently as one of the States of Mexico, on which much has been written and spoken by diplomats and politicians, it is certain that when Texas declared her independence, and arrayed herself in arms to make good the declaration, she claimed the Rio Grande to be her boundary.

After the first great battle between Mexico and Texas, fought at Bexar, it was provided in the capitulation made by General Cos to General Burleston, among other things, that the convicts brought into the country by Mexican officers should be taken by Cos "*beyond the Rio Grande.*" Again, General Burleston agrees to furnish Cos with provisions "*necessary for his troops to the Rio Grande.*"

In the compact made after the battle of San Jacinto, between the the dictator, St. Anna, and five of his generals, and the President of the republic, David G. Burnet, 14th May, 1836, the 5th article expressly establishes the Rio Grande as a boundary.

On the 19th December, 1836, the Congress of Texas passed an act entitled "An act to define the boundaries of Texas," in which they clearly mark out the line of the Rio Grande.

It is thus positively shown that prior to the annexation of Texas her claim was to the Rio Grande, and her jurisdiction extended with as much right over that portion of the country between the Nueces and the Rio Grande as over any other portion of her territory. Whether she would make good that right of jurisdiction over any portion of the territory, was a question to be decided by the "*ultima ratio regum.*"

The war waged between Mexico and Texas was not on the dispute of the boundary, but was for independence on the one side, and subjugation of a rebellious province on the other.

The assertion of claim to this boundary is to be found in various other acts of the congress of Texas, providing for representation, establishing collection districts, &c., &c.

Texas having demonstrated through a series of years that she was able to make good her revolt from Mexico by force of arms, and maintain herself as an independent State, on the 1st of March, 1845, the Congress of the United States passed a joint resolution for her admission as a State into the Union. The first section provided for her admission with the territory properly included in, and rightfully belonging to, the republic; and the second section provides that the government of the United States shall have the power to adjust "all questions of boundary that may arise *with other governments.*"

The United States having thus made itself a party to the war between Mexico and Texas, it was eminently proper that this condition should be obtained, not for the purpose of acquiring any territorial interest for the government itself, but that it might be possessed of full authority in the exercise of its treaty-making power.

Under this resolution, the people of the independent republic of Texas assembled in convention, and formed a State constitution, in which the territory of the State is described as heretofore established

by her, and on the 29th December, 1845, Texas was admitted as a State "on an equal footing with the original States in all respects whatever."

On the 2d February, 1848, a treaty of peace was ratified between the United States and Mexico, by the 5th article of which the Rio Grande is acknowledged as one of the boundaries between the two countries.

Thus the claim which was maintained by Texas, as to her boundary during the period of her independence, was made good and firm by the transactions subsequent. The United States thus acquired no territory for itself within the limits of Texas, but only vindicated her right thereto by the common force of the Union, and as the common protector of the States which compose it.

Under these circumstances, the occupation of any portion of the territory between the Neuces and the Rio Grande by the military forces of the United States, for military purposes, no more placed in abeyance the political jurisdiction of the State of Texas over such portion than would a similar occupation, for similar purposes, of the city of Boston deprive the State of Massachusetts of the authority now exercised over it. These transactions which occured at Brazos are, therefore, to be judged of by precisely the same rules as if they had occurred under similar circumstances at Boston.

We come next to consider whether a State has authority to regulate the question of pilotage.

By the act of Congress of 7th August, 1849, (1 Stat., 54,) it is provided, "that all pilots in bays, harbors, &c., &c., &c., shall continue to be regulated in conformity with existing laws of the States respectively, or with such laws as the States may respectively *hereafter* enact for the purpose, until further legislative provision shall be made by Congress."

This act is an early recognition by Congress that the States were not deprived of this right, either by the power granted to "regulate commerce," or by any other grant of authority. For if the States had been divested of this power, Congress could not confer it by act.

In the case of Cooley *vs.* The Port Wardens of Philadelphia, the Supreme Court of the United States say: "It is the opinion of a majority of the court that the mere grant to Congress of the power to regulate commerce did not deprive the States of the power to regulate pilots, and that, although Congress has legislated on the subject, its legislation manifests the intention, with a single exception, not to regulate this subject, but to leave its regulation to the several States." (12 How., 320.)

Having thus ascertained the legislative power of the State, we now advert to the act of Texas, approved 17th April, 1846. (p. 60.)

The 9th section regulates the rate of pilotage, and provides that, "whenever a vessel shall decline the service of a pilot outside of the bar, and shall enter the port without one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage;" and so in the case of going out, &c., &c. The statute then enumerates the class of vessels which are made an exception to the provisions of this section.

The 11th section provides a penalty of $50 for any other person not appointed as a pilot to discharge these duties.

As this statute does not exempt vessels in the employment of the government of the United States, they are as much subject to its provisions as vessels in the employ of individuals. Government vessels can no more claim exemption from such a regulation than they could from the operation of a State quarantine law, or any other regulation for enforcing the police powers of the State.

Accordingly we find a regulation of the Navy Department, 3d of April, 1847, rescinding that of the 3d July, 1842, and directing that "ships-of-war will hereafter receive pilots, and pay them according to the laws of the States respectively in which they are employed."

The facts of the case show that not only was the claimant deprived of emoluments which he was entitled to receive, but that in very many instances these emoluments were paid to the government.

In reference to the separate objection made to the schedule D, that the services therein charged for were rendered during a period when claimant was in the employ of the United States, it is sufficient to say that the claimant was an officer of the State of Texas, under bonds to perform the duties of his office. He was the only commissioned pilot for that port. He kept up the boats properly manned necessary for that purpose, and there is nothing shown in the terms of the contract to authorize the conclusion that the intended to abandon those duties, or give to the government the fees he might earn for that period.

P. PHILLIPS,
Solicitor for Petitioner.

WASHINGTON, *February* 1, 1859.

IN THE COURT OF CLAIMS.

THOMAS B. KING *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for services performed as a pilot, under the laws of Texas, at the port of Brazos Santiago, in 1846, *and subsequent thereto, and for compensation to which under said laws he was entitled when ready to perform, and the officers of the United States refused to employ him.*

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That on the 17th of April, 1846, the State of Texas passed a law concerning pilots, the eleventh section of which prohibits every person not appointed a branch or deputy pilot from piloting into or out of any harbor in the State when a branch or deputy pilot shall have offered his services, under a penalty of fifty dollars. (Act, Record, p. 63.)

The first section of the act authorizes the governor to appoint branch pilots, and the eighth authorizes the branch pilots to appoint deputy pilots. (Act, Record, pp. 60, 62.)

The 9th section prov.des, among other things, as follows: "That

the rate of pilotage on any class of vessels shall not, in any part of this State, exceed three dollars for each foot of water which the vessel at the time of piloting draws, and that whenever any vessel, except the classes below excepted, shall decline the services of a pilot outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage, and any vessel which, after having been brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who first brought her in, or if she come in without the aid of a pilot, though offered outside, she shall, in so going out, be liable to the payment of half pilotage to the pilot who first offered his service before she came in." (Record, pp. 62, 63.)

Second. That the plaintiff claims in his petition that he was appointed and commissioned a branch pilot on the 4th November, 1846, but that fact is not proved in the record by competent evidence.

Third. That for a portion of the time during which the claimant makes his charges, he was employed by the United States at a regular monthly compensation, and that they were entitled to his services.

Acting Quartermaster General Thomas, referring to the account presented for services between November, 1848, and November, 1850, says "that it was rejected, after due examination, on the ground that Captain King (the pilot) was, at and during the time that he charged pilotage, actually in the service of the quartermaster's department as master of a public steamer, and paid at a *fixed rate of monthly compensation;* and that all the vessels for which pilotage was charged were towed in and out of the harbor by the public steamer under his command, without any pilot being on board of them," &c. (Record, p. 87.)

Chapman, a. q. m., says: "Captain King only presented this account to me some two or three months since. I declined to pay it, but told him he could, if he chose, refer to you, (General Jesup.) I declined to pay for the following reasons: Captain King was master of the United States steamer 'Anson' during the time for which he has charged pilotage on public vessels. He was at the same time a regularly commissioned pilot for the harbor of Brazos Santiago. The public vessels on which he charged pilotage were towed in and out of the harbor by the steamer 'Anson,' he being on board in every instance. At the time I appointed Captain King master of the 'Anson,' nothing was said by either, or even thought of by me, about pilotage, and no mention was made on the subject until he spoke to me of his claim two or three months since."

"During the war with Mexico, all public vessels were, I believe, towed by government steamers, but the masters were not commissioned pilots. When they towed in private vessels they charged no pilotage; whereas Capt. King while he commanded the 'Anson' did, while I at the same time charged towage, and credited the amount to the government.

"During the war no vessels, public or private, crossed the bar without a pilot, unless they were towed by a public steamer; and

after the loss of the 'Anson,' no captains of vessels would cross the bar without a pilot.

"You will observe, from my accounts, that after the loss of the 'Anson' up to the time the public schooners were sold, I always paid the regular pilotage on them." (Record, pp. 88, 89.)

Fourth. The quartermaster's department refused to employ said claimant to pilot public vessels because the law of Texas was not obligatory upon the United States.

Acting Quartermaster General Thomas says: "In regard to the claims which he sets up for pilotage which he had a right to perform by virtue of his office, and which he states his services were refused, I have to remark, that during the war with Mexico, the quartermaster's department generally, if not in all cases, piloted its own vessels, (public,) and did not recognize the rights or claims of any pilots commissioned by the government of Texas to pilot public vessels, unless specially employed as private individuals by proper authority, when they were paid a reasonable compensation for their services." (Record, p. 87.)

Fifth. That during the Mexican war the quartermaster's department had at Brazos Santiago steamers, the masters of which acted as pilots to government vessels, and if Texas pilots were on board they were not recognized as such, and were not paid as such.

Acting Quartermaster General Thomas says: "During the war with Mexico the department had steamers at that port, the masters of which acted as government pilots, and they towed in and out of the harbor the government vessels, and if at any time Texas pilots were on board of such vessels, and they were not there by any recognized authority, they were not paid. (Record, pp. 87, 88.)

Sixth. That where the government chartered private vessels, the question whether they would employ pilots was one which they judged of for themselves, and they alone were responsible if they did so, and the United States had nothing to do with that question.

Acting Quartermaster General Thomas says: "In regard to *private* chartered vessels, which were towed in and out of the said harbor by the United States steam tow-boats, I have to remark, that it was optional with the masters of said private vessels to employ a Texas pilot or not, as they judged proper. In many instances it is believed they did employ them, to secure their insurance in case of damage in crossing the bar; and in others they did not, especially when not insured. As far as this office is informed, its officers never interfered in the matter, one way or the other; if the masters of such private vessels refused to acccept the services, or employ or pay a State pilot, it was an affair between the parties concerned; it was no concern of the public, as it did not pay the pilotage of private or chartered vessels." (Record, p. 88.)

Seventh. It was known to all who claimed to be pilots, that the United States would not pay pilotage except when they expressly employed a pilot, and that all services of that kind rendered or offered were against the wishes of the government.

In June, 1847, Major Eastland gave notice that "no pilotage would

be paid for, unless the service was rendered on written authority from the quartermaster." (*Eastland's* statement, Record, p. 22.)

The following is the part of the notice, posted up in a public place, relating to this subject, and is dated June 4, 1847:

"From and after this date, no pilotage will be paid on government vessels unless by written order of the undersigned. From and after this date, vessels coming into this port loaded with government property may, at the option of the commanders, employ pilots or not; government boats will, for the present, take them in and out free of charge." (Record, p. 84.)

Eighth. Major Eastland assigns his reasons for not paying various claims for pilotage in the record from pages 22 to 28.

General Jesup says: "As an employee of the government, Mr. King was not entitled to pay as pilot." (Record, p. 89.)

Ninth. There was no necessity for the services of King in relation to bringing in and sending out vessels at Brazos Santiago.

General Jesup says: "In the performance of my duty under the laws of the United States, I had provided proper and suitable lighters and pilots to bring all transports safely into depot." (Record, p. 91.)

Tenth. Although within the boundary of Texas as claimed by that State and the United States, the civil authorities of Texas had not the possession of Brazos Santiago, and did not and could not exercise civil jurisdiction there before or during the war, because she was not able to and did not hold actual possession of the territory at that place and in its vicinity, and therefore the law concerning pilotage was not practically and effectively in force there.

General Thomas, assistant quartermaster general, says: "When Texas was incorporated into this Union the Mexican boundary was unsettled. Mexico held the country to the desert, about midway between Corpus Christi and the Rio Grande. * * Mexico being in the military possession of the territory in dispute, had a right to hold it if she could, and the title to it depended upon her ability to hold it. Texas was admitted into the Union without any fixed boundary on the side of Mexico, she claiming to the Rio Grande in its whole length, and Mexico to the Sabine; but she gave to the United States the right to adjust this disputed boundary. The war was still going on, and though we sent a minister to Mexico and endeavored to negotiate, we became a party to it.

"We had taken the place of Texas, and had assumed her claim, but it required two parties to settle the boundary, and it was not until the treaty of Guadalupe was ratified that the port became ours, and consequently a part of Texas, and that any pilot could be legally appointed for it by the State of Texas. So far as the United States was concerned, up to that time it was a belligerent territory subject to the result of war. General Taylor had taken possession of it by order of the government, but to maintain himself it it he was compelled to fight two bloody battles. General Taylor had a right to be there, and to use any part of it that might be necessary to give effect to his operations. Brazos Santiago being a convenient harbor, it was occupied by military force, and it was held by said force as a military station until the close of the war. It was held as a conquered country

by military law, and Texas had no legal right to exercise any civil jurisdiction over it, or to commission pilots to act as such for the public vessels of the United States loaded with military stores and supplies. The right was never recognized, in my opinion, by General Taylor." (Record, p. 90.)

General Jesup says: "Congress alone has the authority, under the Constitution of the United States, to make laws for the government of the army, and in performance of my duty under the laws of the United States, I had provided proper and suitable lighters and pilots to bring all transports safely into depot; but, apart from this, there was a principle of public law applicable to the case which would bar his claim to service there as long as the war continued. The governor of Texas had no doubt authority to grant the commission to Mr. King of branch pilot at Brazos Santiago; but that commission, from the circumstances attending the admission of Texas into the Union, remained in abeyance in the conquered territory during the continuance of the war.

The territory over which Texas could exercise authority extended only so far on the side of Mexico as she had conquered and had been able to hold when she was admitted into the Union; her jurisdiction did not extend with the conquest of the territory, for she had given the United States authority to settle her boundary to the west, (5 U. S L., p. 797, § 2.) To do that required the action both of the government of the United States and that of Mexico. The line was not and could not be settled by conquest. It was settled by the treaty which closed the war. On the ratification, or rather on the publication of the treaty of peace, the right of Texas to the whole territory to the Rio Grande became absolute, and the commission of Mr. King, up to that time in abeyance, then took effect. Not having his claims before me, I cannot speak of them in detail; but the objection to those subsequent to the war was, that Mr. King was in the public service, in command or on board of a public steamer, receiving a salary from the United States for the very service for which it appears he claims a second compensation. * * * * * * * *

From the large amount of his claim he must have charged for the pilotage of chartered vessels. With them the public had nothing to do, as we were not bound either for pilotage or lighterage, though the public pilots and lighters brought them into the harbors gratuitously." (Record, p. 91.)

Eleventh. The resolution of March 3, 1845, for the annexation of Texas, contains the condition, that "said State to be formed subject to the adjustment of this government of all questions of boundary that may arise with other governments." (5 U. S. L., 797.)

Twelfth. The resolution of admission, dated 29th December, 1845, refers to and recites that the annexation was upon certain conditions, and no boundaries are mentioned in the act of admission. (9 U. S. L. p. 108.)

Thirteenth. That the act of the 29th December, 1845, extending the laws of the United States over Texas, does not refer to or describe any boundaries. (9 U. S. L. p. 1.)

Fourteenth. That the act of the 31st December, 1845, establishing

a collection district in Texas, does not define any boundaries, but declares the State to be a district, with Galveston a port of entry, and Sabine, Velasco, Matagorda, Cavallo, Lavacca, and Corpus Christi ports of delivery. (9 U. S. L. p. 2)

Fifteenth. That the act of 3d March, 1847, divided the Texan district, and declared "that all that part of the State of Texas south and west of the counties of Matagorda and Wharton, and including said counties, shall be detached from the district of Texas, and shall constitute a collection district; and that Saluria, on the northeasterly part of the Island of Matagorda, shall be the port of entry for said district; and that Matagorda, Aransas, Copano, and Corpus Christi as ports of delivery only." (9 U. S. L. p. 182.)

Sixteenth. That the boundary between the United States and Mexico was not established until the treaty of the 2d of February, 1848, which was proclaimed on the 4th of July of that year. By the treaty, the Rio Grande, or Rio Bravo del Norte, was fixed as the dividing line. (9 U. S. L. p. 926.)

Seventeenth. Texas formally assented to this boundary under the act of the 9th of September, 1850. In that act the Rio Bravo, at 32° north latitude, is made a point of departure, and the line runs thence down the river into the Gulf of Mexico. (9 U. S. L. p. 446, § 1.)

And for evidence of assent, see President Taylor's proclamation. (9 U. S. L. p. 1005.)

Eighteenth. There is no sufficient evidence that King was ever appointed and commissioned a pilot under and by virtue of the laws of Texas for Brazos Santiago.

Nineteenth. There is no evidence that the law of Texas was executed by the appointment by the governor and consent of the Senate of a board of five commissioners, as required by law, to attend to the matter of pilots and pilotage, as required by 2d and 3d and 6th and 7th sections of the Texas pilot act.

Twentieth. There is no evidence that said King ever gave the bond required by the 5th section of the law "before said pilot can exercise the duties of his office."

Twenty-first. There is no evidence that the pilot commissioners fixed the time that he must reside in Texas before he could act as pilot, or that he resided there such length of time before the period for which he claims pilotage and half pilotage.

The 4th section of the act provides:

"That the board of commissioners of pilots of each port shall require a certain term of residence in the Republic of Texas, not less than two years, to authorize any person to exercise the functions of branch pilot for their port." (Record, p. 61.)

LEGAL PROPOSITIONS.

FIRST. *That Brazos Santiago was not a port within the meaning of the law of Texas.*

The plaintiff has wholly omitted to make any proof upon the subject of Brazos Santiago being a port within the act of Texas. It was not, under the laws of Congress, either a port of entry or delivery. He

does not show that, prior to our troops going there, there was a town or population there. Nor does he prove by proper evidence that he was actually commissioned a branch pilot for that place. He does not show that it was a place where ships arrived for purposes of trade, or where they sought shelter. The Texas law contemplated by the word "port" a place where there were inhabitants occupying it, and where vessels arrived and departed, and would need the services of a person experienced in the local navigation to aid them in so doing. The law looked to ordinary commerce, and to promoting and protecting those engaged in it. There is no proof that there was any at this place at or before the war. The military operations of the government seems to have occasioned all the arrivals and departures of vessels. The business of the war could not have constituted it a port within the intention of the act. This is clearly shown by the act itself, which was passed before the existence of war with Mexico was declared by Congress, and it does not name this place. The legislature meant by the term "port," a place of business where there was considerable commerce arriving and departing by sea. The plaintiff has not proved that Brazos Santiago was such a place; nor is this shown in the geographical knowledge then existing. At and before the war it seems not to have been a town or a settled place, but a mere inlet or strait, or passage leading from the open sea, between the islands of Bocca Chio and Padre, to the main land. Point Isabel was the nearest port of the main shore, and is now a port of entry for the district of Brazos de Santiago, and a place of considerable business. The war seems to have made Brazos Santiago what it was from the time of its commencement to its conclusion, and occasioned whatever of importance it subsequently acquired. It clearly was not then a port within the meaning of the act.

SECOND. *That the place where said plaintiff claims the exclusive right of piloting, and to be entitled to fees as charged, was not at the time within the civil jurisdiction of Texas, and therefore that State could not confer upon him the franchise which he sets up.*

The record shows that Texas, prior to the Mexican war, never had possession of Brazos Santiago; but that Mexico claimed and was in possession considerably to the east of that place.

It also shows that it was not within the specified boundaries of the State; but that the question of her boundary on the Mexican side was left open at the time of her annexation and admission for future adjustment by the United States.

There is no evidence that Texas had the actual possession or exercised effective jurisdiction over that part of the territory which included Brazos Santiago.

Although the State might go through the form of issuing commissions to civil officers, there is no proof that she did so until after the United States had taken military possession of the disputed territory, and none until more than a year after the United States troops had expelled those of Mexico, and then only as to a single justice of the peace.

The evidence of assumption of jurisdiction by the executive of Texas was not until about fifteen months after our troops had won their first battle fields.

At that time the western boundary of Texas had not been fixed or determined, but remained open, and not under the control of Texas.

This question was not settled prior to the 4th of July, 1848, when the treaty of peace which established the Rio Grande as the boundary was proclaimed.

Up to this time all that region which had not been conquered and under the actual control of the State of Texas, was held, like portions of Mexico, by virtue of the laws of war, as having been conquered from the latter government. The laws of war prevailed, and the military occupants prescribed and executed them in such manner as they chose.

The government of the United States, which made the conquest, had never relinquished its possession or rights, nor clothed Texas with the right or power of control. Where the western boundary of Texas would be established no one could determine before the treaty of peace. Until that was made, confirmed, and became effective, no officer of the government could, by any act of his, confer upon Texas any right of possession or jurisdiction of territory which at and before the war she had not in her actual physical possession.

Prior to the establishment of the western boundary, Texas could not legislate and her acts become effective over territory which she had not conquered or reduced to her actual possession. All acts clothing persons with power and conferring franchises in advance of the treaty were invalid and of no legal validity, and could confer neither power, rights, nor advantages.

THIRD. *That during the period when said plaintiff was in the employment of the United States receiving a salary he could not lawfully demand compensation for any extra services.*

The record shows that for a large portion of the time during which the present claims arose, the plaintiff was in the employment of the United States under a stated salary, and that it was his business to command one of their steamboats. It also shows that these steamboats, in their regular employment, towed sailing vessels, some belonging to the United States and others chartered by them, from the sea into the harbor and out to sea again. On such occasions, whatever he did for the sailing vessels was done as the master of the steamboat and as a part of his duty, and not as a pilot.

Under such circumstances he could neither have piloted nor offered to pilot vessels in or out. He neither performed nor offered to perform the services for which he now charges.

By virtue of his employment by the United States the government became entitled to his services, and to all that he could do in the command and management of the steamer. As a matter of fact he did nothing to entitle him to anything.

Again, as he was employed under a stated salary, he would be excluded from further or extra compensation under the acts of Congress.

The act of March 3, 1839, (5 U. S. L., 349, § 3,) provides: "That no officer in any branch of the public service, or any other person, whose salaries or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation in any form whatever for the disbursement of public money, or the performance of any other service, unless such extra allowance or compensation be authorized by law."

The act of May 18, 1842, (5. U. S. L., 487,) though stringent, applied only to the money appropriated under that act.

The act of August 23, 1842, (5 U. S. L., 510, § 2,) provides: "That no officer in any branch of the public service, or any other person whose salary, pay, or emoluments is or are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or any other service or duty whatever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."

The act of the 26th of August, 1842, (5 U. S. L., 525, § 11,) among other things, provides: "And no greater allowance shall be made to any such clerk or other person than is or may be authorized by law, except the watchmen and messengers, for any labor or service required of them beyond the particular duties of their respective stations, rendered at such times as does not interfere with the performance of their regular duties."

The act of the 30th of September, 1850, (9 U. S. L., 542, 543,) provides: "That hereafter the proper accounting officers of the Treasury, or other pay officers of the United States, shall in no case allow any pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time."

The act of the 31st of August, 1852, (10 U. S. L., p. 100, § 18,) provides: "That no person hereafter who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of another office."

(These several acts are brought together for convenience, though only a portion of them are supposed to be strictly applicable to this case.)

Here are provisions which forbid the payment to the plaintiff of any sum of money beyond his regular compensation as master of the steamboat during the time he was thus employed.

FOURTH. *That while said plaintiff was in command of a government steamer which towed and piloted in vessels, whether public or private, he could not lawfully demand pilotage of the United States for bringing in such vessels.*

The duties of pilots are well defined. Those at sea have charge of the helm and the ship's route; the other class are officers authorized by law, who are taken on board at a particular place for the purpose of conducting ships through a river, road, or channel, or from or into

port. They have rights, and are bound to perform certain duties. Such pilots are found in all countries.

Instead of engaging in the business of practically piloting vessels, for a long period the plaintiff hired out to the defendant as master of one of their steamboats, in which capacity one of his duties was to tow out and tow in, through the Brazos Santiago channel, such vessels as directed by the officer giving directions to the steamer.

Could the defendants, while they thus employed the plaintiff, successfully prosecute him for not leaving the steamer and going out to pilot in vessels? Clearly they could not recover against him, because they had otherwise appropriated his time and services. For the like reason he can make no valid claim on account of not being employed as a port pilot when he was engaged to the defendants as the master of a towing steamer. He neither piloted nor offered to pilot, nor could he pilot vessels for the government or anybody else while he was personally employed in the active duties of master of the defendant's steamers.

The United States in hiring a master for their steamers undoubtedly selected one who was competent to perform the duties they wished discharged. Among these duties was the towing their vessels in from and out to sea. This duty the plaintiff performed. He towed in those owned by the government, and such as they chartered, when desired to do so. By consenting to be employed by the United States in this service, the presumption is that he was satisfied with their action in doing so. Had not this been so, he would have declined the service on the steamer. While engaged in this service he could not and did not attend to any other. Having, in fact, rendered no other service, he can neither charge nor recover for any other.

FIFTH. *That under the State law the plaintiff would not be authorized to act as a branch pilot without having resided in Texas such time as the pilot commissioners should prescribe, nor without giving the proper bond, nor without being actually commissioned in conformity with the statute.*

The plaintiff has not proved by competent evidence that he was in fact commissioned as a branch pilot prior to the date of the services for which he charges. He has offered no evidence to show that the pilot commissioners had fixed the term of his residence in Texas; and none that he had given the bond required by the State law.

These are three indispensable requisites to a recovery. But he makes no proof of either. His residence and bond are not alluded to in the evidence. Nor is there any proof that the plaintiff possessed a commission as a branch pilot for Brazos Santiago, or for any other place. Witnesses speak of him as a commissioned pilot and as an acting pilot, but no one speaks of having seen his commission, nor does he produce one, although he ostentatiously parades his commission as a justice of the peace.

When he sues, claiming a monopoly and fees for not acting, he takes upon himself to show that he held a commission under and conformable to a law that entitled him to what he demands. He might have been a pilot, or acting pilot in fact, without being actually appointed, and in fact commissioned under and in conformity to the law,

so as to be entitled to the franchises which that law provides for branch pilots. The absence of all proof upon these points authorizes the conclusion that none could be made, and for the reason that none existed. Without proof of these facts he cannot recover.

In case of his actual employment as a pilot, though not commissioned, he would be entitled to a reasonable compensation. But this would not entitle him to charge, under a statute, an arbitrary sum. But when he demands a statute rate provided for a commissioned pilot, or half fees when he offered to serve but was refused, he must prove that he held in fact a commission under the act which would entitle him to make such demands. Not having done so, he has no legal demand.

SIXTH. *That vessels belonging to the United States are not bound to employ pilots unless they choose, nor can they be compelled to pay anything when they do not so employ.*

The question of pilotage and fees, where a pilot's services were refused upon the chartered vessels, is a question between the pilots and those owning or managing such vessels, with which the United States have nothing to do. Such vessels undertake to render to the government certain specified services for a specific compensation. The expenses they incur in performing the contract are matters of their own precisely as in the case of individual contractors. If such vessel employs a person not an authorized pilot, the regularly commissioned pilot has his remedy, where he has offered service which has been refused, for half pilotage against the vessel or her owner or officers, and also for the penalty specified in the 11th section of the act. These are matters which the plaintiff must settle with those who are liable under the law. The United States have no interest in these questions.

But the government is not bound to employ a pilot commissioned under a State law, nor to pay for services tendered and not accepted. The United States have a right to pilot their own vessels by their own pilots, or to conduct them without. The several States can make no laws to bind them in this respect. The federal government, in performing the duties assigned to it under the Constitution, is wholly independent of all local laws, but acts under laws declared in that instrument to be supreme, and which are binding upon all.

In the present case it is proved that the United States were at war with Mexico, and that the vessels belonging to the United States now in question were engaged in services, under the War Department, in aid of the prosecution of that war. They were engaged in transporting men, provisions, and munitions of war, to be employed in defence of our own soil, and to invade the territory of our enemy. They constituted a part of the instrumentalities employed by the government in the prosecution of the war. Any attempt to control the action of the government in the use of these instrumentalities by a State, whether by way of direct or indirect taxation, or in any other manner subjecting them to burdens, is clearly contrary to the federal Constitution, which, within its legitimate sphere, is subject to no superior or control.

If Texas could impose any duty or burden upon any of the means thus provided for the war, she might upon all. Such a power, carried out to its legitimate extent, would enable any State to control the army and navy approaching or within her borders. If the power is admitted at all, the extent of its exercise is a matter of discretion with such State. She might impose burdens and duties that would forbid the hope of meeting and discharging them. It would rest with her alone to determine what the national government should do. The admission of the existence of any such rights and power on the part of the States would be destructive of all the great purposes for which the Constitution and Union were formed. But no such rights or power exist.

In *McCullough* vs. *Maryland*, 4 Wheat., 316, the Supreme Court held: "If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.

"The State governments have no right to tax any of the constitutional means employed by the government of the Union to execute its constitutional powers. The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress to carry into effect the powers vested in the national government."

In *Osborn* vs. *The Bank of the United States*, 9 Wheat., 738, the principles of this case were reaffirmed.

In *Weston* vs. *City and County of Charleston*, 2 Pet., 449, it was held, that "a tax imposed by a law of any State of the United States, or under the authority of such law, on stock issued for loans made to the United States, is unconstitutional.

"The restraint is imposed by our Constitution. The American people have conferred the power of borrowing money on the government, and by making that government supreme, have shielded its action in the exercise of that power from the action of the local governments. The grant of the power, and the declaration of supremacy, is a declaration that no such restraining or controlling power shall be exercised."

In *Dobbin* vs. *The Commissioners of Erie County*, 16 Pet., 435, the case was this: "A captain of the United States revenue cutter, on the Erie station in Pennsylvania, was rated and assessed for county taxes, as an officer of the United States, for his office. Held, that he was not liable to be rated or assessed for his office under the United States for county rates and levies."

Speaking of the general and broad right of taxation, the court held: "But in our system there are limitations upon that right. There is a concurrent right of legislation in the States and the United States, except as both are restrained by the Constitution of the United States. Both are restrained by the express prohibitions in the Constitution; and the States, by such as are reciprocally implied where the exercise of the right by a State conflicts with the perfect execution of another sovereign power delegated to the United States. That occurs when taxation by a State acts upon the instru-

ments and emoluments and persons which the United States may use and employ as necessary and proper means to execute their sovereign power. The government of the United States is supreme within its sphere of action. The means necessary and proper to carry into effect the powers of the Constitution are in Congress."

In *Norris* vs. *The City of Boston*, and *Smith* vs. *Turner*, (*passenger* cases,) 7 How., 283, it was held, that the statutes of New York and Massachusetts imposing taxes upon alien passengers arriving in the ports of those States, were contrary to the Constitution and laws of the United States, and therefore null and void.

The reasoning of a portion of the opinions of the judges in those cases is applicable to the present case, although the question decided in it arose and was determined under a different constitutional power.

The same is true of *Gibbon* vs. *Ogden*, 9 Wheat., 210.

If the States can impose this tax or burden, they can provide for its collection by seizing and detaining the vessels or the officers who refuse to pay, and in that way deprive the United States of their vessels and men, and thus weaken or cripple the public service, and place it at the mercy of our enemies. A power which can produce such results cannot be recognized as lodged in the States without express recognition or irresistible inference.

In the case of *Cooley* vs. *Board of Wardens*, 12 How., 299, the question was between the board of wardens of Philadelphia and an individual who questioned the validity of the State law as an enactment trenching upon the commercial power under the Constitution.

The point was, whether the State could enact such a law where Congress had the power to do so; and it was held, that inasmuch as Congress had not done so, the State might enact. The power of the State to tax vessels belonging to the United States and employed in the execution of an express constitutional power was not before the court, nor was any opinion expressed upon the subject.

If the instruments of war can be taxed, the federal government is no longer supreme within its own sphere, but is at the mercy of the several States. This can hardly be contended for, and still it must be the law if the plaintiff's claim has any legal foundation.

This claim does not originate in a law of Congress, nor under a regulation of a department, nor upon a contract, express or implied; and therefore this court cannot award the plaintiff anything, even if the above objections were not insuperable.

Believing there is no ground for a recovery, I abstain from all discussion of the question concerning the amount of damages claimed by the plaintiff. He is clearly not entitled to anything in law or equity, nor has he any mere moral right.

R. H. GILLETT,
Solicitor.

FEBRUARY 28, 1859.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

THOMAS B. KING *vs.* THE UNITED STATES.

LORING, J. delivered the opinion of the Court.

The petitioner alleges that he was a branch pilot of the port of Brazos Santiago, and as such he claims for services rendered to the United States, and pilot fees due to him therefor, under the statute of Texas.

At the time the claim is alleged to have arisen the United States had military occupation of the port of Brazos Santiago and the adjacent country, and received at that port their munitions of war, &c., for carrying on the war with Mexico, and the vessels employed for the purpose were under control of the quartermaster general's department.

The charges of the petitioner are divided into four classes:

1st. For vessels belonging to the United States piloted in and out of Brazos Santiago harbor, Texas, from June 1, 1847, to August 1, 1847, for which payment was refused by order of Major Thomas B. Eastland, acting quartermaster at said port. (Schedule A, p. 26.)

This class of claims amounts to the sum of $396, and the petitioner avers in his petition that payment of this class was refused by Major Eastland, "on the grounds that the services had been rendered without a *written* order from this department; and he further avers and puts in evidence that before these, or any services were rendered, Major Eastland had issued, and posted up in public places, the following notice:

"BRAZOS SANTIAGO,
"*Quartermaster's Office, June* 4, 1847.

"From and after this date no pilotage will be paid on government vessels unless by written order of the undersigned. From and after this date vessels coming to this port loaded with government property, may at the option of their commanders employ pilots or not; government boats will, for the present, take them in and out free of expense. From and after this date, all vessels, when discharged, must haul out from the wharves, unless otherwise ordered, as soon as discharged, or pay a fine of twenty-five dollars for the benefit of the hospital at this depot.

"THOMAS B. EASTLAND,
"*Major and Quartermaster U. S. A.*"

The second class of claims is for vessels belonging to the United States government, and spoken and pilot refused, or piloted and certificate refused, by order of Major Thomas B. Eastland, acting quartermaster at Brazos Santiago, between the first day of June, A. D. 1847, and October 31, 1848. (Schedule B, p. 28.) The amount of this item of claim is $5,638.

The third class of claims is for private vessels piloted and towed in and out of Brazos Santiago, by United States steamers, between

the 1st June, 1847, and 31st October, 1848, by order of Thomas B. Eastland, acting quartermaster. (Schedule C, p. 36.)

The fourth class of claims is for vessels belonging to the government of the United States, piloted in and out of Brazos Santiago, between November 1, 1848, and 1st December, 1848, and the amount of the claim therein specified is $2,014 50.

The amount of all the claims of the petitioner is $13,464.

The petitioner claims as branch pilot of the port of Brazos Santiago, and under the statute of Texas entitled an act for the regulation of pilots, enacted 17th April, 1846; it being claimed for him in the argument that the statute of Texas is adopted by the 4th section of the act of the United States, of August 7, 1780, (U. S. Laws, 1 vol., p. 53.) That section of said act of the United States is in these words:

SEC. 4. *And be it further enacted*, That all pilots in the bays, inlets, rivers, and harbors of the United States, shall continue to be regulated in conformity with the existing laws of the States, respectively, wherein such pilots may be, or by such laws as the State may respectively hereafter enact for that purpose, until further legislative provision shall be made by Congress."

But this section of the act of Congress only leaves pilots in the discharge of their ordinary official duty in relation to merchant vessels, and contracts with individuals; to the jurisdiction of State laws; it does not in any way refer to vessels of the United States, or subject them, or that exclusive control of them, which belongs to the United States, to State authority. The pilot laws of the States are adopted by the act of Congress to that extent to which they reached by their own force of State sovereignty, but it does not extend them over the sovereignty of the United States, or subject to them vessels of the United States, on which of their own force they could not have acted. The vessels of war of the United States; are the means by which the national government executes the purposes committed to it, and therefore they are necessarily free from interference or control in any manner or degree by the legislation of the States; for if the States could control such national means in any degree they could in every degree, and thus embarrass or prevent their use by the national government. If Texas could impose one pilot fee, she might impose any she pleased; if she could impose pilot regulations because they are in the nature of police laws, and for the safety of the citizen, she might for the same reason impose at her pleasure quarantine laws on vessels of the United States, and either by pilot laws or quarantine laws she might have delayed or prevented the arrival of munitions of war at the port of Brazos Santiago, upon which the issue of a battle, and the national welfare involved in it, depended. Certainly the 4th section of the act of Congress of August 7, 1780, never intended so to empower a State or so to subject the United States.

If the vessels of the United States were not subject to the laws of Texas, the petitioner must shew a contract on the part of the United States, made by some authorized officer of the United States. The vessels of the United States for which the charges of the petitioner

are made were under the orders of the Quartermaster's department, and Major Eastland was the acting quartermaster for the port, and the person to contract on the part of the United States.

It is quite apparent that the subject of pilotage was a proper matter for a contract; the services were to be continuous, and might be protracted, and the specification of the plaintiff's claim shows 751 distinct charges from June, 1847, to November, 1849; such an amount of service might reasonably be dealt with and contracted for on different terms than a single act of pilotage.

There was therefore nothing unreasonable in the order of Major Eastland, above stated, that no pilotage should be paid for unless rendered on a written order from him; it was the only means of preventing the petitioner from taking charge of vessels of the United States as pilot, and charging fees under and according to the rates of the statute of Texas. The evidence shows the petitioner claimed this right, and that Major Eastland on the part of the United States denied it and resisted its exercise.

Now, so far as schedule A. is concerned, it is certain there was no contract made by Major Eastland for the pilotage therein specified. By the plaintiff's own showing his service was rendered, if at all, against the order of the United States, and attempted to be enforced on them by him as his official right under the laws of Texas. The petitioner in his petition says (p. 7.) that Major Eastland refused to pay him for these charges, because "he had not been specially employed to pilot said vessels," and he adduces Major Eastland's certificate appended to the first ten charges, which is as follows: "Payment declined, for the reason that on the 4th of June, 1847, notice was given that no pilotage would be paid unless the service was rendered on written authority from the quartermaster, which was never given."

So far as schedule B. is concerned, the charges are in part for vessels which refused pilotage and were not piloted, and in part for vessels which were piloted and for which certificates of pilotage were refused. The evidence in no way distinguishes between these classes, and it cannot be told what vessels or how many belonged to either class, and as to those who refused pilots, only half pilotage was chargeable under the statute of Texas, and the plaintiff charges full pilotage for all. Besides this, the objection to the charges in schedule A. are applicable to, and conclusive against, the charges in schedule B. The evidence shows that no contract was made for them, and that so far as pilotage was offered or rendered it was under claims of an official right, and without a pretence of any contract with any officer of the United States.

Schedule C. is for piloting vessels not belonging to the United States, but freighted with their munitions of war. This circumstance does not tend to show a liability on the part of the United States for pilotage. The order of Major Eastland expressly declares that the pilotage of such vessels is the private matter of their respective masters, in which they may act their pleasure; and the evidence shows that the petitioner sued the master of one of these vessels for fees for her pilotage. For any services rendered to such vessels, no ground whatever is shown for charging the United States.

As to schedule D, the petitioner was master of a United States tow-boat, under monthly pay, and as such it was his duty to tow the vessels of the United States or vessels freighted for the United States in and out of the harbor; and this service he performed; and he claims pilotage on the vessels he towed, but a contract to tow is not and does not prove a contract to pilot; and if a contract to tow involved a contract to pilot, then the petitioner has been paid for it, for he has received the price stipulated for the performance of the contract he made, (p. 92.) The testimony of Major Chapman is express. He says, (p. 88:) At the time I appointed Captain King master of the Anson, nothing was said by either, or even thought of by me, about pilotage, and no mention was made of the subject until he spoke to me of his claim *two or three months since;*" that is, about three years after the contract for towage was made. The evidence therefore disproves a contract for the charges in schedule D.

It is observable that the petitioner charges for all his alleged services at the rate of three dollars for each foot of water the vessel piloted drew. The ninth section of the act of Texas enacts, "That the rate of pilotage on any class of vessels shall not in any port of this State exceed three dollars for each foot of water which the vessel at the time of piloting draws." This only fixes the maximum beyond which the charges for pilotage shall not be carried. And the 6th section enacts, "That the board of commissioners of pilots shall have authority *within the limits provided by this act* to fix the rates of pilotage." The petitioner has offered no evidence to show the action of the commissioners on any rates of pilotage fixed by them; and the statute does not of its force fix any rates of pilotage for the port of Brazos Santiago, but leaves that duty to the commissioners.

On the whole case we are of opinion, that the petitioner has failed to show any liability or contract on the part of the United States for the pilotage claimed for, and that he is not entitled to the relief he prays.

Ex. L. E. B.